

(2016) 06 GUJ CK 0013
In the Gujarat High Court
Case No : Criminal Appeal No. 2108 of 2005

State of Gujarat

APPELLANT

Vs

Raval Valjibhai Harchandbhai

RESPONDENT

Date of Decision : 08-06-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378
Evidence Act, 1872 — Section 32 (1)
Penal Code, 1860 (IPC) — Section 114, 306, 498A

Citation : (2017) 173 AIC 323 : (2016) CriLJ 4322 : (2017) 1 Crimes 140 :
(2017) 1 GLR 486

Hon'ble Judges : Mr. R.P. Dholaria, J.

Bench : Single Bench

Advocate : Mr. L.B. Dabhi, Add. Public Prosecutor, for the Appellants No. 1;
HCLS Committee, Advocate, for the Opponent/Respondent Nos. 1 and 2; Ms.
Bhavna D. Acharya, Advocate, for the Opponent/Respondent No. 1 and 2

Final Decision : Dismissed

Judgement

Mr. R.P. Dholaria, J.(Oral)—This is an appeal preferred by the State of Gujarat, under Section 378 (3) of the Criminal Procedure Code, 1973, against the judgment and order of acquittal dated 6.6.2005, recorded by the learned Additional Sessions Judge, Fast Track Court No. 3, Patan, in Sessions Case No. 321 of 2002.

2. It is the case of the prosecution that the marriage between the deceased Vimlaben and Mukeshbhai, son of the accused-respondent no. 1 took place three years prior for the date of incident and since that day the deceased was staying with her husband, mother-in-law and sister-in-law, in a joint family. On 30.12.1998 at about 15.00 hours, when she was alone in the house, she told her father-in-law and mother-in-law that as she was in disposed, she wanted to stay separately. It is further the case of the prosecution that since arrival of the deceased to her in-laws house, time and again her father-in-law and sister-in-law were teasing her by saying that she is unable to bear a child and that she was

not doing household work. In this way they were torturing her mentally, as a result of which, on 30.12.1998 at about 15.00 hours, she after pouring kerosene set herself on fire and started shouting and upon hearing the shouts of the deceased, her husband and other persons rushed there and thereafter she was taken to the dispensary and was admitted and during the course of treatment, she expired. Accordingly, a complaint for the offences punishable under Sections 498(A), 306 read with Section 114 of the IPC, was filed before Chanasma Police Station.

3. In pursuance of the aforesaid complaint, the Police recorded the statements of the witnesses and after completion of investigation, filed charge-sheet which came to be committed to the learned trial Court. After conclusion of trial and hearing, the learned trial Court acquitted the accused-respondents from all the charges levelled against them. Therefore, the present appeal.

3.1 At the end of the trial, after recording the statement of the accused under section 313 of the CrPC and after hearing the arguments on behalf of the prosecution and the defence, the learned trial Court delivered the judgment and order, as stated above.

4. Being aggrieved by the same, the appellant State has preferred the aforesaid Criminal Appeal before this Court.

5. By way of preferring the present appeal, the appellant has mainly contended that the learned trial Court has failed to appreciate the evidence on record and has wrongly recorded the order of acquittal. It is further contended that learned trial Judge has not appreciated the evidence on record in its proper perspective and in fact, there was no appreciation of evidence so far and hence, the impugned judgment and order of acquittal is required to be reversed as such.

6. Mr. L.B. Dabhi, learned APP appearing for the State has reiterated and urged the grounds mentioned in the memo of appeal. Learned APP has taken this Court through the paper book and evidence on record and argued that the judgment and order of the trial Court is against the provisions of law as the trial 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 all the ingredients of alleged charges against the present respondents. Learned APP has also taken this court through the oral as well as the entire documentary evidence. It is further submitted by learned APP that the judgment and order of acquittal passed by the learned trial Judge is based on inferences not warranted by facts of the case and also on presumption not permitted by law. It is also submitted by him that the learned trial Judge has not properly appreciated oral as well as documentary evidence and thereby committed error by acquitting the respondents for the alleged offences under Sections 498(A), 306 read with Section 114 of the IPC which requires to be reversed as such and the accused are required to be convicted. Mr. Dabhi, learned APP has also drawn attention of this Court to the impugned judgment as well as record and proceeding of learned

trial Court and stated that the order of acquittal recorded by the learned trial Court is required to be converted into conviction as such. Mr. Dabhi, learned APP has further argued that evidence in the nature of dying declaration is available in the record as well as the prosecution witnesses were near relatives of the deceased and all evidences have clearly revealed before the trial Court that the present respondents ill treated the deceased and continuously teased her that she is sterile and due to which she committed suicide.

7. On the other hand, Ms. Bhavna D. Acharya, learned advocate appearing for the respondents argued that the learned trial Court has elaborately dealt with the evidence on record and rightly recorded the finding and acquitted the accused from the charges levelled against them. She further argued that except complainant, none of the witnesses have supported the case of the prosecution. She has further argued that on the date of incident i.e. on 30th December, 1998, statement of deceased was recorded by the Police as well as Executive Magistrate wherein deceased has clearly narrated that she was using steel primus (stove) and while filling the air by pumping the aforesaid primus, accidentally she caught fire and due to which she sustained serious injuries and none has burnt her. As per the information of the Medical Officer, she died due to extensive burnt injury. From the set of the evidence, the death of deceased is accidental and no iota of evidence is available to the effect that the accused have abated her to commit suicide and consequently therefore, finding recorded by the learned trial Court is in consonance with the evidence available on record which calls for no interference.

8. This Court has heard Mr. L.B. Dabhi, learned APP for the appellant-State and Ms. Bhavna D. Acharya, learned advocate appearing for the respondents-accused.

9. Having heard learned counsel for the respective parties and having gone through the impugned judgment as well as record and proceedings of learned trial Court, on overall analysis of the evidence on record, indisputably as per the prosecution case, the present respondents who happened to be mother-in-law and sister-in-law used to tease the deceased by calling her sterile and due to such continuously teasing, she committed suicide.

10. In order to prove the guilt on the part of the present respondents, the prosecution examined for about 10 witnesses and also placed documentary evidence before the learned trial Court. The prosecution has examined prosecution witnesses Nos. 2 to 5 who are near relatives such as father, sisters and brothers. Almost all witnesses have deposed similarly in parallel line to each other that the present respondents used to tease the deceased that she was sterile and due to which she committed suicide. However, in the cross-examination, some contradictions and omissions have been brought on record, not only that, but they have also admitted that whatever they have stated is based upon the information gathered from the source and from some of the information received from the deceased. The another set of evidence in the nature of dying declaration appears to have been recorded by the Police as well

as Executive Magistrate on the day of incident i.e. 30.12.1998, wherein she has stated that at about 3.00 p.m. when she was preparing tea over primus (stove) at that time in order to clean air in the primus she was pumping the stove and accidentally her sari caught fire in the result she sustained burnt injury over herself and at that time her husband and father-in-law and others came over there and tried to extinguish fire and took her to the Civil Hospital, Mehsana. The deceased also appears to have given another statement before Dy. S.P. Patan on 2.1.1999 at about 6.30 p.m. wherein she has narrated that she was residing along with her husband and in-laws as well as sister-in-law and she has also narrated that she got married for about three years back. She further narrated that on 30.12.1998, her mother-in-law as well sister-in-law harassed her and they were constantly teasing her that she is sterile as well as they were also trying to find fault in her and in her day to day usual house hold work and due to which, she had fallen in depression and when she was alone in house, she poured kerosene over herself and caught fire. She has further stated that whatever she has earlier stated was due to fear of her father-in-law.

11. On overall analysis of the evidence on record, it is clearly emerging out that there is very short span of marital life for about three years out of which, the deceased stayed for about two years. As per the evidence on record, on the date of accident she gave dying declaration before the police as well Executive Magistrate wherein the deceased herself has narrated the issue as accident, whereas, after about three days she has involved the present respondents by stating that they were teasing her for not bearing child and due to which she committed suicide. On the evaluation of the evidence on record, two contradictory versions are coming from the mouth of deceased herself and she is no more in the world. The statement given before the Executive Magistrate as well as before the Police on the date of incident appears to be more reliable keeping in mind all the surrounding circumstances of the case.

12. It is also a settled legal position that in acquittal appeals, the appellate Court is not required to rewrite the judgment or to give fresh reasonings, when the reasons assigned by the Court below are found to be just and proper.

13. In above view of the matter, this Court is of the considered opinion that learned trial court was completely justified in acquitting the respondent of the charges levelled against them. This Court finds that the findings recorded by learned trial court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. This Court is, therefore, in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by learned court below and hence finds no reasons to interfere with the same.

14. In the result, this appeal fails and accordingly, it is dismissed. Bail bond, if any, stands cancelled. R & P to be sent back to the trial Court, forthwith.