
(2015) 04 GUJ CK 0088
In the Gujarat High Court
Case No : Criminal Appeal No. 1969 of 2004

State of Gujarat

APPELLANT

Vs

Thakore Bharatji Tejaji and Others

RESPONDENT

Date of Decision : 29-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378, 417, 418, 423
Penal Code, 1860 (IPC) — Section 114, 306, 498-A

Citation : (2015) 04 GUJ CK 0088

Hon'ble Judges : Kaushal Jayendra Thaker, J

Bench : Single Bench

Advocate : Monali Bhatt, A.P.P., for the Appellant; D.K. Desai, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Kaushal Jayendra Thaker, J.—The State has preferred this appeal under Section 378 of the Criminal Procedure Code against the judgment and order dated 30.6.2004 rendered by the learned Additional Sessions Judge, Fast Track Court, Mehsana, in Sessions Case No. 41 of 2004. The said case was registered against the present respondents original accused for the offence under Sections 114, 498-A, and 306 of the Indian Penal Code.

2. The case of the prosecution is that:-

2.1 The daughter of the complainant Pasaji Mansangji Thakore, viz. Ilaben was married with respondent No. 1 Bharatji Tejaji according to the rites and customs. On 29.10.2003 at about 3 to 3.30 one Thakore Ramanji Babaji informed the complainant that his daughter has consumed poison and she has been admitted in Visnagar Hospital. Therefore, the complainant, his elder brother Ravtaji Mansangji and his wife Jitaben had rushed to Visnagar Hospital and inquiry was made but no whereabouts were found about Ilaben. Therefore, they had gone to Village-Gothva, and while going at the house of father-in-law of deceased, accused No. 1 met them and at that time inquiry was made by complainant

about health of Ilaben, accused No. 1 replied that she has been victimized due to anger of mataji. When they approached the house of Ilaben, they came to know the Ilaben had consumed poison and committed suicide due to harassment and ill treatment given by the respondents. Therefore, the complaint came to be filed before Visnagar Police Station for the alleged offences under Section 498-A, 306 and 114 of IPC.

2.2 Thereafter, investigation was carried out and charge sheet came to be filed against the accused persons in the Court of learned Magistrate. As the case was sessions triable the same was committed to the Court of Sessions. Thereafter, charge came to be framed and explained to the accused persons, to which the accused persons pleaded not guilty and claimed to be tried.

2.3 In order to bring home the charges against the accused persons, prosecution has examined four witnesses. The prosecution has also produced thirteen documents on record.

2.4 Thereafter, after filing closing purshis by the prosecution, further statements of accused person under Section 313 of the Code of Criminal Procedure, 1973 were recorded. The accused persons have denied the case of the prosecution and submitted that a false case is filed against them.

2.5 At the conclusion of trial and after appreciating the oral as well as documentary evidence, the learned Judge vide impugned judgment, acquitted the respondents - accused.

3. Being aggrieved by and dissatisfied with the said judgment and order of acquittal dated 30.6.2004 rendered by the learned Additional Sessions Judge, Fast Track Court, Mehsana, in Sessions Case No. 41 of 2004, the appellant-State has preferred the present appeal before this Court.

4. Ms. Monali Bhatt, learned APP appearing for the State has submitted that the order of acquittal is against law and evidence on record. She submitted that the learned Judge has erred in not appreciating the deposition of the witnesses and the judgment is based on inferences. She submitted that the learned trial Judge has failed to appreciate the evidence of complainant Pasaji Mansangji Thakore, Exh. 16, and Jitaben Pashaji Thakore, Exh. 18, corroborates with the complaint as far as cruelty alleged to have been committed by the accused persons is concerned. These witnesses have stated that the deceased was driven out of the house by the accused persons three to four times and whenever she was visiting her parental home, she used to complain about the ill treatment given to her by the accused persons. She submitted that learned trial Judge has committed an error in holding that deceased and her husband were residing separately in a hut and the deceased did not like it, therefore, she committed suicide. She lastly submitted that the learned Judge has erred in not properly construing and interpreting the evidence adduced by the prosecution and has erred in acquitting the accused. She, therefore, submitted that this appeal may be allowed and the impugned judgment may be reversed.

5. On the other hand, Mr. Desai submitted that there is no infirmity in the impugned order. He submitted that the lower court has rightly appreciated the evidence on record and acquitted the respondents of the charges levelled against them. He submitted that from the evidence on record, it cannot be said that the prosecution has succeeded in proving the offence alleged against the accused persons. He also submitted that considering the evidence on record, when two views are possible in view of catena of decisions of Honourable Supreme Court this Court should not reverse the finding of acquittal of the accused persons unless it is found that the judgment of the trial Court is perverse on the face of it. He, therefore, submitted that the impugned judgment may not be interfered with and it may be confirmed.

6. I have heard Ms. Bhatt, learned APP for the appellant and Mr. Desai, learned advocate for the respondents. I have gone through the papers produced in the case. Looking to the charge framed against the respondent accused for the offence under Sections 114, 306 and 498-A of the IPC, the prosecution has to prove its case beyond reasonable doubt. While passing the impugned judgment, learned Sessions Judge has found that Jitaben Pashaji has stated in her evidence that the accused were giving physical and mental torture to the deceased with regard to food but she has not given such statement before police. She also stated in her cross-examination that the deceased and her husband were residing separately even before the incident. It is also found that the allegations made against the accused are general in nature and no specific incident is pointed out by the complainant. Even the postmortem report shows that there were no external injuries on the body of the deceased. Therefore, the prosecution has failed to prove its case beyond reasonable doubt. It is also found by the trial Court that since the deceased has committed suicide, it cannot be believed that the accused have abetted such suicide. Therefore, in my view, learned Judge has rightly observed that from the evidence on record it could not be proved that an offence under Section 498-A is committed and ingredients of Section 306 of the IPC also could not be established. It cannot be said that because of the respondents' provocation, instigation or abetment the deceased had committed suicide. Therefore, learned Judge has rightly observed that the prosecution could not prove its case beyond reasonable doubt. I do not find any material to dent the impugned judgment or to hold that any of the accused has committed any offence, which would call for interference. The findings of fact recorded by the learned trial Judge cannot be said to be perverse. Therefore, it cannot be said that the findings recorded by the trial Judge are contrary to law or the evidence on record. I am not impressed by the submissions made by learned APP. In view of this, judgment of the trial Court cannot be said to be perverse.

7. In a recent decision in the case of Satvir Singh Vs. State of Delhi, (2014) AIRSCW 4924 : (2014) 9 SCALE 528 , the Honourable Supreme Court has observed as under:

"19. An early but exhaustive consideration of the law in this regard is to be found

in the decision of *Sheo Swarup v. King Emperor* wherein it was held that the power of the High Court extends to a review of the entire evidence on the basis of which the order of acquittal had been passed by the trial court and thereafter to reach the necessary conclusion as to whether order of acquittal is required to be maintained or not. In the opinion of the Privy Council no limitation on the exercise of power of the High Court in this regard has been imposed by the Code though certain principles are required to be kept in mind by the High Court while exercising jurisdiction in an appeal against an order of acquittal. The following two passages from the report in *Sheo Swarup* adequately sum up the situation:

"There is, in their opinion, no foundation for the view, apparently supported by the judgments of some courts in India, that the High Court has no power or jurisdiction to reverse an order of acquittal on a matter of fact, except in cases in which the lower court has "obstinately blundered", or has "through incompetence, stupidity or perversity" reached such "distorted conclusions as to produce a positive miscarriage of justice," or has in some other way so conducted itself as to produce a glaring miscarriage of justice, or has been tricked by the defence so as to produce a similar result.

(emphasis supplied)

Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognized in the administration of justice."

20. The principles of law laid down by the Privy Council in *Sheo Swarup* have been consistently followed by this Court in a series of subsequent pronouncements of which reference may be illustratively made to the following: *Tulsiram Kanu v. State*, *Balbir Singh v. State of Punjab*, *M.G. Agarwal v. State of Maharashtra*, *Khedu Mohton v. State of Bihar*, *Sambasivan v. State of Kerala*, *Bhagwan Singh v. State of M.P.* and *State of Goa v. Sanjay Thakran*."

8. It is settled legal position that in an acquittal appeal, the Appellate Court is not required to re-write the Judgment or to give fresh reasonings when the Appellate Court is in agreement with the reasons assigned by the trial Court acquitting the

accused. On the touchstone of these judgments, the principles enunciated therein go to show that the finding of fact recorded in the impugned judgment cannot be said to be perverse and this view is based on facts and the law of the land. In the instant case, this Court is in full agreement with the reasons given and findings recorded by the trial Court while acquitting the respondents-accused and adopting the said reasons as well as the reasons aforesaid, in my view, the impugned Judgment is just, legal and proper and requires no interference by this Court at this stage. Hence, this appeal sans merit and is required to be dismissed.

9. In the result, this appeal is hereby dismissed. The impugned Judgment and order dated 30.6.2004 rendered by the learned Additional Sessions Judge, Fast Track Court, Mehsana, in Sessions Case No. 41 of 2004, acquitting the respondents-accused, is hereby confirmed. Record and Proceedings, if any, be sent back to the trial Court concerned forthwith. Bail and bail bonds, if any, stands cancelled.