

**(2009) 09 GUJ CK 0021**  
**In the Gujarat High Court**  
**Case No : Criminal Appeal No. 559 of 1994**

State of Gujarat

APPELLANT

Vs

Ubedabibi and Others

RESPONDENT

**Date of Decision :** 15-09-2009

**Acts Referred:**

Evidence Act, 1872 — Section 113A

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

**Citation :** (2009) 09 GUJ CK 0021

**Hon'ble Judges :** K. S. Jhaveri, J

**Bench :** Single Bench

**Advocate :** R.C. Kodekar, app, for the Appellant; M.J. Buddhbhatti, for the Respondent

## Judgement

K.S. Jhaveri, J.—Criminal Appeal No. 559 of 1994 preferred by the State is for enhancement of sentence against the judgement and order dated 25.03.1994 passed by the Additional Sessions Judge, Mehsana in Sessions Case No. 10 of 1990, whereby the accused have been convicted of the charges leveled against them under Sections 306 & 498(A) of Indian Penal Code.

1.1 The original accused were ordered to undergo rigorous imprisonment for two years & fine of Rs. 250/- in default to undergo simple imprisonment for fifteen days for offence u/s 306 of Indian Penal Code. The original accused were also ordered to undergo rigorous imprisonment for two years & fine of Rs. 250/- in default to undergo simple imprisonment for fifteen days for offence u/s 498(A) of Indian Penal Code. Both the sentences were ordered to run concurrently.

1.2 Criminal Appeal No. 414 of 1994 is preferred by the accused against the judgement and order of conviction and sentence dated 25.03.1994 passed by the Additional Sessions Judge, Mehsana in Sessions Case No. 10 of 1990.

2. It is the case of the prosecution that the deceased was married to the accused No. 3 for almost seven years. The deceased gave birth to three children out of

the wed-lock. It is alleged that she was mentally and physically tortured by the accused persons. The accused No. 3 is alleged to have been drinking liquor and beating the deceased at the instigation of the accused Nos. 1 & 2. Once the complainant who is the brother of the deceased brought her to his house following series of complaints from the deceased regarding the ill-treatment. Later on after talks and discussions, the deceased was taken to her marital house. But the ill-treatment continued. Finally on 02.10.19889 the complainant received information that the deceased Sairabibi committed suicide by pouring kerosene over herself along with two minor children.

2.1 Therefore the offence was registered against the accused with Mehsana City Police Station. After their arrest and necessary investigation, chargesheet was submitted against the accused. Ultimately, as the case was exclusively triable by the Sessions Court, the same was committed to the Sessions Court.

2.2 The trial was initiated against the accused and during the course of trial the prosecution examined the following witnesses as oral evidences:

Vinubhai Ishwarbhai Ex. 18

Mahammadrafiq Bhurekahan Ex. 22

Amirkhan N. Ex. 23

Femidabibi Ex. 24

Mahammad Unman Ex. 41

Abdul Raheman Ex. 44

M.K. Bhatt Ex. 45

2.3 The prosecution also exhibited the following documents as documentary evidences:

Complaint by Mahmad Pathan Ex. 56

Inquest Panchnama Ex. 25

Inquest Panchnama Ex. 26

Inquest Panchnama Ex. 27

Panchnama of scene of offence Ex. 42

Panchnama of clothes Ex. 28

Panchnama of person of accused Ex. 29

Panchnama of clothes Ex. 30

Panchnama of person of accused Ex. 31

P.M. Note Ex. 32

P.M. Note Ex. 20

P.M. Note Ex. 21

Yadi of sending muddamal to FSL Ex. 46

FSL Report Ex. 47

Vicera report Ex. 49

Vicera report Ex. 50

FSL Report Ex. 51

Zerox copy of notice Ex. 32

Zerox copy of notice Ex. 33

Letter by M.M. Jaiswal to A.S. Ansari Ex. 34

Letter by A.S. Ansari to M.M. Jaiswal Ex. 35

Map of scene of offence -

2.4 At the end of trial, after recording the statement of the accused, and hearing arguments on behalf of prosecution and the defence, the learned Sessions Judge passed the judgement and order dated 25.03.1994 as stated hereinabove.

2.5 Being aggrieved by and dissatisfied with the aforesaid judgement and order passed by the Sessions Court the accused as well as State have preferred the present appeals.

3. Mr. R.C. Kodekar, learned APP has also submitted that the trial court ought to have taken serious view of the matter and ought to have imposed maximum sentence upon the accused. He has submitted that considering the fact that the deceased died along with the two children shows the extent of cruelty meted out to the deceased and therefore the sentence is absolutely inadequate and that the trial court ought to have awarded maximum sentence prescribed under the Act.

3.1 He has submitted that in view of the evidence on record, more particularly, the evidence of the complainant, P.W. 2 & P.W. 3 coupled with the documentary evidence like the notice issued by the advocate for the accused and the reply by the advocate for the deceased at Exs. 32 & 33 the mental and physical torture is clearly borne out. He has submitted that there is ample evidence on record to establish the abetment and provocation on the part of the accused persons to drive the deceased to suicide. Mr. Kodekar has taken us to the evidence of the witnesses and submitted that looking to the same, offence u/s 498(A) is proved.

3.2 Mr. Kodekar has contended that in fact looking to the fact that the prosecution has successfully proved the offences against the accused as observed by the trial court, the court ought to have awarded maximum sentence. He has submitted that the sentence awarded to the accused u/s 306 of Indian

Penal Code ought to have been five years instead of two years even if the average of the maximum sentence prescribed under the Act is considered. He has submitted that even this bench has awarded five years sentence for offence u/s Indian Penal Code in its previous decision and therefore considering the fact that the victim was ill-treated mentally and physically and was forced to go to her parental house previously, the sentence awarded is very much inadequate and the same deserves to be enhanced. In support of the said submission, Mr. Kodekar has relied upon a decision of the Apex Court in the case of K. Prema S. Rao v. Yadla Srinivasa Rao reported in AIR 2003 SC 17.

4. Mr. Buddhbhatti, learned advocate appearing for the accused has submitted that the trial court has erred in not appreciating the evidence on record and that the witnesses in the present case are interested witnesses and therefore their evidence cannot be considered. He has submitted that the court below failed to appreciate that no independent witness has been examined to support the prosecution case.

4.1 Mr. Buddhbhatti has further submitted that on the date of incident the accused No. 1 was 58 years old and the accused No. 2 was around 67 years old. Considering the passage of time of 20 years, the accused No. 1 would be around 78 years and the accused No. 2 would be around 87 years. He has submitted that considering the age of the accused and the fact that no allegations have been made against the accused Nos. 1 & 2 they may be granted benefit of Probation of Offenders Act.

4.2 Mr. Buddhbhatti has also submitted that looking to the evidence on record and the related witnesses nothing has come on record to establish that the deceased was compelled to commit suicide. He has submitted that the accused No. 3 may also be granted benefit of doubt in view of the absence of cogent evidence against him.

5. We have gone through the judgement and order passed by the trial court. We have also perused the oral as well as documentary evidence perused by the trial court and also considered the submissions made by learned Advocates for both the sides.

6. The trial court has gone into the evidence on record and has come to the conclusion that the incident in question is a case of suicide as it emerges from the panchnama of scene of offence and other panchnamas. The medical evidence clearly states that the death was as a result of shock due to burns. The question which arises here is that whether there had been any provocation or abetment to the incident in question.

6.1 It is borne out from the record that the accused No. 3's wife-deceased Shahidabanu was subjected to mental and physical cruelty as a result of which she committed suicide with her two minor children. The said fact is evident from the evidence of the complainant and P.W. 2 & 3. It appears that the family had no regard for the daughter in law. The complainant has stated that the deceased

was in fact abused physically in his presence and therefore he had brought her to his house. Thereafter, the deceased used to stay with the complainant and during this time she was also pregnant.

6.2 In the meantime the accused No. 3 through his advocate sent notice Ex. 32 to the deceased alleging desertion. The notice and reply at Ex. 32 & 33 clearly bring out the fact that there was considerable ill-treatment meted out to the deceased Shahidabanu. The reply to the notice Ex. 32 by the advocate for the deceased Shahidabanu mentions that prior to two years from the date of reply she was driven out of the marital house and was also physically abused considerably. It states that though she was pregnant the accused persons harassed her and the accused No. 3 in particular beat her. Even after a son was born the accused persons did not turn up to see the child or the mother. In that view of the matter, it cannot be said that the allegation of cruelty and harassment is an after thought. It was the bone of contention since 1987 when the deceased was brought to her parental house. It is quite prudent that a married lady shall never leave her marital house without any rhyme or reason and reside at her parental house. For the deceased to do so and that too way back in the year 1987 there ought to have been some ill-treatment meted out to her. Thus, it can be gauged that the offence u/s 498(A) is clearly made out from the aforesaid discussion.

7. Clause (a) of the Explanation u/s 498 defines cruelty to mean a "wilful conduct of the husband of such nature as is likely to drive the woman to commit suicide". In the instant case, the accused pressurized and harassed the deceased to bring more dowry from her parental house. She was driven out of her marital house when she was expecting. It is also borne out that the accused No. 3 used to beat her and neglect her. A mother can never take such a drastic step by which she would also kill her sons. If the deceased Shahidabanu has done so it indicates the level of desperateness and ill treatment subjected to her. The trial court was therefore perfectly justified to hold the accused guilty of the offence of "cruelty" u/s 498(A).

7.1 As a result of such cruel treatment the deceased was driven to commit suicide with her two minor children. Thus offence of abetment of committing suicide punishable u/s 306 of Indian Penal Code is clearly made out against accused and for that purpose presumption u/s 113A of the Evidence Act can be raised against them. Section 306 of Indian Penal Code and Section 113A of the Evidence Act thus read 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.

113-A. 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 husband 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.

7.2 The trial court has found the husband and the accused parents of the husband guilty of cruel treatment of his wife and as a result the wife committed suicide with two minor children. On such evidence the presumption which arises u/s 113A of the Evidence Act is that the accused abetted the suicide. A case of conviction and sentence of the accused u/s 306 of Indian Penal Code is clearly made out.

8. As a result of hearing and perusal of records, in our view, the crux of the matter could be set out that the deceased was subjected to mental and physical harassment by the accused. She had once left the matrimonial house of the accused and was brought back following a compromise between the parties. She was ill-treated even when she was pregnant.

9. An attempt is made by Mr. Buddhbhatti, learned advocate appearing for the accused to submit that the age of the accused Nos. 1 & 2 would be approximately 78 and 87 respectively and therefore they may be granted benefit of Probation of Offenders Act.

9.1 In view of the above discussion, this Court is of the opinion that the trial court has rightly convicted the accused under Sections 498(A) and 306 of Indian Penal Code. This Court however is of the opinion that the accused Nos. 1 & 2, considering the age at present, may be granted benefit of Probation of Offenders Act. However, the submission regarding inadequacy of the sentence u/s 306 of Indian Penal Code is required to be accepted qua accused No. 3 who is the husband of the deceased. The decision in the case of K. Prema S. Rao (supra) relied upon by learned APP is required to be perused at this stage. Para 27 of the said decision reads as under:

27. The legislature has by amending the Penal Code and Evidence Act made Penal Law more strident for dealing with and punishing offences against married women. Such strident laws would have a deterrent effect on the offenders only if they are so stridently implemented by the law Courts to achieve the legislative intent. On the facts found and the offence proved to have been committed leading to suicidal death of the wife, imprisonment of two years with fine of Rs. 500/- is too light a sentence. For offence u/s 306, Indian Penal Code the sentence may extend to ten years. In this case the husband is found to have harassed his wife to such an extent as to drive her to commit suicide. Sentence of five years would, in our opinion, be a proper sentence for the crime with the amount of fine increased to Rs. 20,000/- to be paid as compensation to the parents of the deceased. On non-payment of fine the accused No. 1 shall suffer

further sentence of one year.

9.2 Considering the aforesaid decision coupled with the submission of the learned APP and in view of the facts and circumstances of the case, we are of the opinion that the submission of the learned APP is required to be accepted and the sentence of two years is required to be enhanced to five years qua the accused No. 3. It is to be borne in mind that the accused No. 3 is the husband of the deceased and the father of the deceased minor children and therefore he was their guardian. He should have been more responsible with his family and in fact ought to have supported and guided his wife and children in the right way.

10. In the premises aforesaid, the conviction of the accused under Sections 306 & 498(A) of Indian Penal Code vide judgment and order dated 25.03.1994 passed by the Additional Sessions Judge, Mehsana in Sessions Case No. 10 of 1990 is upheld.

10.1 The accused Nos. 1 & 2 are granted benefit under the provisions of Probation of Offenders Act and since they are already on bail their bail bond shall stand cancelled.

10.2 The sentence imposed upon the accused No. 3 u/s 306 of Indian Penal Code is modified and the sentence of two years is enhanced to five years. The sentence imposed upon the accused No. 3 u/s 498(A) of Indian Penal Code is also modified and the sentence of two years is enhanced to three years.

10.3 Accordingly, the accused No. 3 is ordered to undergo rigorous imprisonment for five years with fine of Rs. 250/- in default to undergo simple imprisonment for fifteen days u/s 306 of Indian Penal Code. The accused No. 3 is also ordered to undergo rigorous imprisonment for three years with fine of Rs. 250/- in default to undergo simple imprisonment for fifteen days u/s 498(A) of Indian Penal Code Both the sentences to run concurrently.

10.4 Both the appeals are partly allowed. Time of eight weeks is granted to the accused No. 3 to surrender before the authorities. Direct service is permitted. R & P to be sent back forthwith.