
(2015) 10 GUJ CK 0005
In the Gujarat High Court
Case No : Criminal Appeal No. 454 of 2007

The State of Gujarat

APPELLANT

Vs

Jagannath Vaman Devre and Others

RESPONDENT

Date of Decision : 30-10-2015

Acts Referred:

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

Citation : (2015) 10 GUJ CK 0005

Hon'ble Judges : Rajesh H. Shukla, J.

Bench : Single Bench

Advocate : H.L. Jani, APP, for the Appellant; Manish J. Patel, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh H. Shukla, J.—The present Appeal is directed against the judgment and order rendered in Sessions Case No. 281 of 2005 by the learned Additional Sessions Judge, Vadodara dated 6.01.2007 recording acquittal of the Respondents - Accused persons for the offence under Section 498A , 306 read with Section 114 of the Indian Penal Code as well as for the offence under Sections 3, 5 and 7 of the Prevention of Dowry Act.

The facts of the case briefly stated are as follows.

2. On 26.12.2014, the deceased daughter of the complainant was married to the Respondent No. 2 at Maharashtra and at that time dowry of Rs. 1,25,000/- as agreed was given. After the marriage the deceased daughter of the complainant was residing at matrimonial house with the accused persons and initially the matrimonial life was smooth. However, after few months, Respondent No. 2 - Accused (husband) dropped the deceased daughter of the complainant to the parental house stating that at the time of marriage though it was promised to give eleven tolas of gold which has not been given and therefore he had left her to the parental house. Thereafter on the next day the in-laws came and took the

daughter of the complainant to the matrimonial house. Thereafter again in the month of March, Respondent No. 2 had dropped the deceased daughter of the complainant and the deceased daughter of the complainant is said to have stated that the harassment is caused to her and she has been abused. Further, it was stated that she has been asked to bring Rs. 50,000/- for the purpose of bore well. However, after some understanding she was sent to the matrimonial house and on 30.4.2005 in the morning a phone call was received by the complainant where the deceased is said to have asked and talked to the mother and thereafter in the afternoon they received a phone call that deceased has committed suicide. On the basis of the complaint given by the complainant father the investigation was made and it was culminated in the FIR being I-CR No. 159 of 2005 registered with Makarpura Police Station for the alleged offence as stated above.

3. After the investigation was over the charge sheet was filed for the offences as alleged and as it was triable by the court of Sessions, it was committed to the Sessions Court.

4. Thereafter the learned Sessions Judge framed the charges for the offences as stated above and proceeded with the trial.

5. In order to bring home the charges levelled against the accused persons the prosecution has examined the witnesses including the complainant father and also produced the documentary evidence which shall be referred to in the judgment hereinafter.

6. After the recording of the evidence of the prosecution witnesses was over the learned Sessions Judge recorded the further statement of the Respondents - Accused persons under Section 313 of the Code of Criminal Procedure. Thereafter the defence witnesses were also examined.

7. After hearing learned APP as well as learned Advocate for the accused, learned Sessions Judge recorded the acquittal as stated hereinabove. It is this judgment and order which has been assailed in the present Appeal on the ground inter alia that the court below has committed an error in appreciation of evidence.

8. Heard learned APP Shri H.L. Jani for the Applicant State of Gujarat and learned APP Shri Manish J. Patel for the Respondents - Accused persons.

9. Leaned APP Shri H.L. Jani referred to the charge as well as testimony of the complainant father PW-3 at Exh. 23 and submitted that he has supported his complaint at Exh. 23. He submitted that as transpires from the testimony of the complainant there was a demand for which the harassment was caused to her. He also referred to the testimony of PW-4 and PW-5 and submitted that they have also corroborated the testimony of the complainant father. He submitted that as it transpires from the record there was a demand for dowry. Initially it was settled to Rs. 1,20,000/- and as stated by the complainant father and as suggested in the cross examination the accused themselves have suggested

about such settlement. He therefore submitted that the demand for dowry is established and submitted that it had resulted in the harassment though it was paid and there is a reference for demand of Rs. 50,000/- for the bore well. Learned APP Shri H.L. Jani therefore submitted that the investigation has been made and the testimony of the I.O. at Exh. 33 also corroborates on material aspects.

10. Learned APP Shri Jani submitted that the statement of the Respondents - Accused persons under Section 313 of the Code of Criminal Procedure do not explain about any such relevant aspect of demand for dowry or the death of the deceased. He submitted that the span of marriage life is about six months and therefore it would give rise to the presumption under Section 313(B) of the Indian Evidence Act. He submitted that the provisions of the Dowry Prohibition Act provide for such presumption once the death has occurred within the short span of marriage life particularly when there is a complaint for demand for dowry. He referred to the and relied upon the judgment of the Hon''ble Apex Court reported in A.K. Devaiah Vs. State of Karnataka, and emphasized the observations made in paragraphs 15, 17 and 18. He also referred to and relied upon the judgment of the Hon''ble Apex Court reported in M. Narayan Vs. State of Karnataka . He has also referred to and relied upon the judgment of the Hon''ble Apex Court reported in S. Mahaboob Basha Vs. The State of Karnataka, and also the judgment of the Hon''ble Apex Court reported in Bhim Singh and Others Vs. State of Uttarakhand .

11. Learned Advocate Shri Manish J. Patel for the Respondents Accused persons referred to the testimony of the complainant father PW-3 and submitted that the testimony of other witnesses is not fully corroborating the testimony of the complainant father on material aspects. He submitted that the suggestion which is said to have been referred regarding dowry, it cannot be said that it was a demand for dowry. He submitted that it was not a demand for dowry but it was a customary practice for the expenses for such gift and other rituals. Learned Advocate Shri Patel referred to the testimony of the complainant father PW-3 and submitted that it is evident that the other daughter has also returned back and was serving in the hospital. Learned Advocate Shri Patel submitted that the deceased was pregnant for which she was taken by her sister to the hospital where she was working and still Respondent No. 2 Husband used to accompany. He therefore submitted that it could suggest that there was cordial relations and the care was taken by Respondent No. 2 husband. He also referred to the testimony of PW-6 mother and submitted that she has admitted in the cross-examination that just previous day, Respondent No. 2 husband had taken her to the matrimonial house. In other words the deceased was regularly visiting the parental house and therefore she had sufficient time and opportunity to ventilate her grievance and therefore the offence under Section 306 regarding abetment to suicide would not be attracted and it could be said to be a cause for suicide. He submitted that there is also a theory that she did not like Respondent No. 2 and still she was married and therefore she was not wearing the mangal sutra as

per customs. Learned Advocate Shri Patel submitted that this is a strong indication about the deceased not having any interest in life or matrimonial life with Respondent No. 2 which could have led her to commit suicide. Learned Advocate Shri Patel submitted that though the bogey has been raised for demand for Rs. 50,000/- there is no evidence. Similarly he submitted that if there was a dowry to be given it was given at the time of marriage voluntarily and therefore there was no need for any further demand for which harassment could be caused. He submitted that as suggested in the cross-examination to the complainant father the other daughter has also returned home which led to filing of the case and ultimately it was settled for some money. Learned Advocate Shri Patel therefore submitted that therefore it cannot be readily accepted that there was a demand which has led to commit suicide. Learned Advocate Shri Patel submitted that it cannot be said that the situation was created which compelled her to commit suicide as it is required for the offence under Section 498A Cr.P.C.. Learned Advocate Shri Patel referred to and relied upon the judgment of the Hon''ble Apex Court reported in Chanda Singh Vs. Ranbir Singh, . It has been held by the Hon''ble Supreme Court in paragraph 36 as under:

"36. The court of appeal would not ordinarily interfere with the order of acquittal unless the approach is vitiated by manifest illegality. In an appeal against acquittal, this Court will not interfere with an order of acquittal merely because on the evaluation of the evidence, a different plausible view may arise and views taken by the courts below is not correct. In other words, this Court must come to the conclusion that the views taken by the learned courts below, while acquitting, cannot be the views of a reasonable person on the material on record."

12. Learned Advocate Shri Patel submitted that considering the scope of Section 378 Cr.P.C. and the approach in acquittal appeals the findings arrived at by the court below may not be disturbed even if the other view is possible by the appellate court. He submitted that as it has been observed the innocence of the accused is reinforced by recording acquittal by the court below for various reasons. He submitted that the Hon''ble Apex Court has laid down the broad guidelines expressing the word of caution referring to the judgment of the Hon''ble Apex Court reported in Chandrappa and Others Vs. State of Karnataka, and submitted that the Hon''ble Apex Court has laid down the broad guidelines qua acquittal appeals and therefore considering the same, the view taken by the court below is a possible view which may not be disturbed. Learned Advocate Shri Patel emphasized that it has been observed that while choosing to interfere only the court should find an absolute assurance of guilt on the basis of evidence on record and not merely because the High Court could take one more possible or a different view only. Learned Advocate Shri Patel has referred to and relied upon the judgment of the Hon''ble Apex court reported in Mookkiah and Another Vs. State rep. by the Inspector of Police, Tamil Nadu, and submitted that the same guidelines have been reiterated. He has also referred to and relied upon the judgment of the Hon''ble Apex Court reported in Chanda Singh Vs. Ranbir Singh, and also the judgment of the Hon''ble Division Bench of the High Court

(Coram: K.S. Jhaveri and G.B. Shah, JJ) in Criminal Appeal No. 255 of 2007 with Criminal Appeal No. 789 of 2008 in case of The State of Gujarat v. Pravinbhai Ramabhai Mahire dated 4.9.2015. Similarly, he has referred to and relied upon the another judgment of the Hon''ble Division Bench of the High Court (Coram: K.S. Jhaveri and G.B. Shah, JJ) in Criminal Appeal No. 1009 of 2012 with Criminal Appeal No. 1010 of 2012 in case of State of Gujarat v. Vanrajsinh Gambhirsinh Jadeja & Ors. dated 31.8.2015 and submitted that these guidelines have been considered and therefore the present appeal may not be entertained.

13. In view of this rival submissions, it is required to be considered whether the present appeal deserves consideration.

14. The background of the facts referred to in detail by both the sides particularly emphasizing on the aspect of the demand for dowry or the articles require a closer scrutiny.

15. On appreciation of the evidence, learned APP Shri H.L. Jani has emphasized that as it was suggested to the complainant in the cross-examination and it has been admitted that the amount of Rs. 1,20,000/- was agreed at the time of marriage and it was therefore a demand attracting the provisions of Dowry Prohibition Act. At the same time, learned Advocate Shri Patel has referred to the evidence in the form of testimony of the complainant as well as the testimony of the PW-6 Mother. Thus, it cannot be said that there was some understanding for giving the articles or the gift or making expenses. However, at the same time since it was on mutual agreement at the time of marriage, there is no further issue. Moreover though the suggestion as made with regard to the demand of Rs. 50,000/- for the bore well it has not been established and there is no cogent material or evidence that it was only because of such demand and/or failure to meet with the demand the deceased committed suicide. Before the provisions of Section 306 IPC could be attracted, there has to be clear mens rea to commit the offence. It envisages an active act or the direct act which led the deceased to commit suicide leaving no other option. Further this act must have been intended to push the deceased to such a position that she commit suicide. This aspect has been considered by the Hon''ble Apex Court in a judgment reported in M. Mohan Vs. The State represented by The Deputy Superintendent of Police, . The Hon''ble Apex Court has considered the word "suicide". "Sui" means "self" and "cide" means "killing" thus require active act or indirect act with an intention to push the deceased to commit suicide. There is no such material or evidence placed on record. Further however, the matrimonial discord does not necessarily attract the provisions of Section 498A of IPC. The harassment should be of such a nature as would amount to cruelty as provided in the explanation to Section 498A of IPC. The explanation to Section 498A has been added by the amendment with a view to curb evil of dowry. Therefore Section 498A is required to be considered with the underlying object or the purpose along with the explanation which in turn provide that harassment should be of such a nature which drives a woman to commit suicide. Therefore, for the offence under

Section 498A there has to be such a harassment for the valuable security or demand for dowry and the abetment for suicide would have a reference to the act or the conduct on part of the accused. As stated above, there is no direct and proximate cause for suicide which can be attributed to the Respondent Accused. It is required to be mentioned that admittedly the deceased was coming to the parental house and in fact she was accompanied to the hospital by her husband also when she was to go to the doctor where her sister was serving. This leaves sufficient time for ventilating the grievance or to cool down even if there were some emotional turmoil. Further, if there was a harassment which could be termed as cruelty, it would not have been possible for her to visit the parental house. Assuming that there was a kind of harassment as stated in the testimony of the complainant father, there would have been some social intervention before she could be sent to the matrimonial house if there was any such harassment of grave nature. In the cross-examination he has admitted that he has not talked about the matrimonial dispute or quarrel to anybody. The testimony of PW-6 (Mother) in her cross-examination has clearly stated and admitted that in their caste, wife would put on the mangal sutra though she has denied the suggestion that the deceased did not like her husband. It is an admitted fact that when the incident occurred, she had not put on mangal sutra. Therefore though the allegations are there it would fall short of fulfillment for criteria for the offence under Sections 306 and 498A IPC. It cannot be said that the situation was so created which compelled her to commit suicide. The submissions made with reference to the provisions of the Dowry Prohibition Act also requires establishment of the demand by cogent evidence which has also not been established in the present case. It is in this background the reasons recorded by the court below and the view taken is a plausible view which does not call for any interference.

16. The Hon''ble Apex Court has laid down the broad guidelines with regard to the scope of Section 378 of Cr.P.C. and the approach while dealing with the acquittal appeals. The Hon''ble Apex Court in a judgment reported in Chandrappa and Others Vs. State of Karnataka, has made the observations laying down the broad guidelines expressing the word of caution while reversing the finding of acquittal merely because the other view is possible. It has been observed:

"An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

Unless there are substantial and compelling reasons, the order of acquittal is not required to be reversed in appeal."

17. The same view has been again discussed and reiterated by the Hon''ble Apex Court in a subsequent judgment reported in Mookkiah and Another Vs. State rep. by the Inspector of Police, Tamil Nadu, . It has been observed referring to the scope of Section 378 Cr.P.C. that if the view taken by the trial court is a plausible view it may not be disturbed merely because the other view is also possible. Further in another judgment reported in Chanda Singh Vs. Ranbir Singh, , it has been held by the Hon''ble Supreme Court in Paragraph 36 as under:

"36. The court of appeal would not ordinarily interfere with the order of acquittal unless the approach is vitiated by manifest illegality. In an appeal against acquittal, this Court will not interfere with an order of acquittal merely because on the evaluation of the evidence, a different plausible view may arise and views taken by the courts below is not correct. In other words, this Court must come to the conclusion that the views taken by the learned courts below, while acquitting, cannot be the views of a reasonable person on the material on record."

18. Therefore having regard to the aforesaid broad guidelines and the background of the facts, as the court below has recorded the acquittal on appreciation of material and evidence, it does not call for any interference and the present Appeal deserves to be dismissed and accordingly stands dismissed.