

(2016) 01 TP CK 0015
In the Tripura High Court
Case No : Crl. A. 8 of 2014

The State of Tripura

APPELLANT

Vs

Milan Debnath and Others

RESPONDENT

Date of Decision : 18-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, Section 164(5), Section 313, Section 378
Evidence Act, 1872 — Section 113A
Penal Code, 1860 (IPC) — Section 304B, Section 306, Section 34, Section 498A

Citation : (2016) 01 TP CK 0015

Hon'ble Judges : Utpalendu Bikas Saha, J.

Bench : Single Bench

Advocate : S. Deb Gupta, Advocate, for the Appellant; Sekhar Dutta, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Utpalendu Bikas Saha, J.—1. The State appellant has preferred the instant appeal against the judgment dated 04.01.2014 passed by the learned Assistant Sessions Judge, South Tripura, Udaipur in Case No. ST 66 (ST/U) of 2013 whereby and whereunder the respondents were acquitted from the charges leveled against them under Section 498A/306 IPC.

2. Heard Ms. S. Deb Gupta, learned counsel for the State appellant as well as Mr. Sekhar Dutta, learned counsel for the respondents.

3. Brief facts of the case is that the complainant's daughter namely, Tulsi Debnath (now deceased) was married with the accused, namely, Milan Debnath as per the Hindu rites and customs. After four/five months of the marriage the accused persons, namely, Shri Milan Debnath and Shri Nimai Debnath, being the husband and relative of the husband of Tulsi Debnath subjected her to cruelty both by physically and mentally torturing upon her and also demanding ornaments, TV, cash money. Both the accused persons namely, Shri Milan

Debnath and Shri Nimai Debnath, respondents herein, lastly on 20.07.2010 abetted her to commit suicide by way of physical and mental torture.

4. On the basis of the complaint lodged by PW 1, Sri Lalit Mohan Debnath, father of the deceased, a police case was registered being Kakraban Police Station Case No. 124 of 2010 on 20.07.2010 under Sections 498A/304B/34 of IPC and after completion of the investigation the police submitted charge sheet against the accused persons, namely Shri Milan Debnath and Shri Nimai Debnath under Sections 498A/306 IPC. Upon receipt of the charge sheet, the learned Chief Judicial Magistrate, South Tripura, Udaipur took cognizance of the offence and committed the case to the Court of the learned Sessions Judge, South Tripura, Udaipur being the case was exclusively triable by the court of Sessions. Thereafter, the learned Sessions Judge transferred the case to the court of the learned Assistant Sessions Judge, South Tripura, Udaipur. In course of trial, the learned Assistant Sessions Judge framed charges against the respondent-accused persons for commission of offence punishable under Section 498A and 306 IPC to which they pleaded not guilty and claimed to be tried.

5. In course of trial, prosecution examined as many as 14 witnesses including the official witnesses out of which PW1, Lalit Mohan Debnath is the father of deceased Tulsi Debnath and the informant of the case; PW4, Smt. Shefali Debnath is the mother of the deceased and also exhibited some documents. The prosecution proved the FIR as well as the seized materials and the post mortem report. After closure of the prosecution evidence, the learned Assistant Sessions Judge examined the accused persons under Section 313 CrPC. The accused persons declined to adduce any evidence. The defence case is nothing but denial of the prosecution case. The learned Assistant Sessions Judge at the conclusion of the trial acquitted the accused Shri Milan Debnath, husband of the deceased and Shri Nimai Debnath, father in law of the deceased. Hence this appeal by the State appellant.

6. Learned counsel, Ms. Deb Gupta appearing for the State appellant in her usual fairness submits that admittedly the prosecution failed to prove any demand of dowry but the prosecution proved its case under Section 306 IPC as would be evident from the evidence of PW1 and PW4 that deceased Tulsi was abetted to commit suicide by the accused persons. She further submits that the learned trial court committed error while appreciating the evidence on record, particularly, the evidence of PW4 regarding her statement under Section 164(5) CrPC. She finally submitted that in view of the provisions of Section 113A of the Indian Evidence Act, the presumption should be that the accused persons abetted to the commission of suicide of the complainant's daughter by way of physical and mental torture.

7. On the other hand, Mr. Dutta, learned counsel appearing for the accused respondents submits that regarding the allegation of abetment to commit suicide there is no dependable evidence adduced by the prosecution. He also submits that the learned trial court meticulously considered the evidence on record and

arrived at a reasonable finding and ultimately acquitted the accused persons. He again contends that the evidence on record cannot be split or appreciated separately for each of the accused persons. He further contended that from the scrutiny of the evidence of the prosecution witnesses, no case under Section 498A IPC has been made out against the accused persons as the prosecution witnesses in their statements recorded under Section 161 CrPC did not state anything regarding the demand of dowry. In absence of specific evidence regarding demand of dowry, mere harassment and negligence to the victim would not constitute cruelty and if a case under Section 498A IPC fails then the case under Section 306 IPC will automatically fail because there is absolutely no evidence of abetment of suicide. In support of his aforesaid submission, the case of *Girdhar Shankar Tawade vs. State of Maharashtra* reported in , (2002) 5 SCC 177 was relied upon. He has placed reliance on paragraph 12 of the judgment of *Muralidhar alias Gidda and Anr. vs. State of Karnataka*, reported in , 2014 Cri.L.J. 2365 wherein the Apex Court discussed about principle relating to appeal against acquittal.

8. In paragraph 12 of the aforesaid judgment, the Apex court noted, *inter alia*, that the approach of the appellate court in the appeal against acquittal has been dealt with by this Court in *Tulsiram Kanu v. State* (, AIR 1954 SC 1), *Madan Mohan Singh v. State of U.P.* (, AIR 1954 SC 637), *Atley v. State of U.P.* (, AIR 1955 SC 807), *Aher Raja Khima v. State of Saurashtra* (, AIR 1956 SC 217), *Balbir Singh v. State of Punjab* (, AIR 1957 SC 216), *M.G. Agarwal V. State of Maharashtra* (, AIR 1963 SC 200), *Noor Khan v. State of Rajasthan* (, AIR 1964 SC 286), *Khedu Mohton v. State of Bihar* (, 1970 2 SCC 450), etc. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following: (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court; (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal; (iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and (iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view.

9. In the instant case, before considering the submission of the learned counsel for the parties, it would be proper to examine the evidence on record particularly, the evidence of PW1, Sri. Lalit Mohan Debnath and PW4, Smt. Shefali Debnath.

10. PW1, Sri. Lalit Mohan Debnath who is the complainant of this case and also the father of the deceased Tulsi Debnath stated in his examination in chief that his daughter was married with the accused Shri Milan Debnath as per Hindu rites and customs and he also stated that his daughter lived peacefully for about 5/6 months in her husband's house after her marriage. He has further stated that the accused Nimai Debnath, the father in law of his daughter started demanding TV and other articles from his daughter. He could not fulfill the demand of TV and other articles as demanded by the accused, Nimai Debnath. He has stated that the accused, Nimai Debnath also demanded gold ornaments like ear rings, churi and golden chain and he accordingly gave those items. He has also stated that accused Milan Debnath used to assault his daughter by fist and blows on demand of Rs. 20,000/- from his daughter but he could not fulfill the demand of money.

11. In his cross-examination, he stated that he did not state to the police that the accused persons demanded TV, cash Rs. 20,000/- and gold ornaments from him. He also did not state in his written ejahar that the accused Milan Debnath demanded Rs. 20,000/- from his daughter. He also did not state in his ejahar and in the statement recorded under Section 161 CrPC that he did not see anyone from the accused person's side in the hospital. He also stated in his ejahar and in the statement recorded under Section 161 CrPC that the accuser persons tried to assault his daughter in their presence.

12. PW4, Smt. Shefali Debnath, the mother of the victim, in her examination in chief stated that her daughter lived peacefully in her matrimonial house for about 4/5 months. She also stated like PW1 that the accused persons demanded TV and Rs. 20,000/- but in her cross-examination, she stated that before the police that Nimai Debnath used to assault her daughter in her presence and used to abuse her. She also stated that she gave the same statement when she was brought before the Court.

13. Learned trial court on analyzing the statement of PW4 stated that from her cross-examination it appears that she stated before the police that the accused Nimai Debnath used to assault their daughter in her presence. She also stated that she gave the same statement before the Court when she was brought for recording her statement. But on analyzing the evidence of PW10 who is the judicial officer and recorded the statement of PW4 under Section 164(5) CrPC it is clear that PW4 did not state before the PW10 that the accused Nimai Debnath also used to assault her daughter and abused her in their presence. It is also clear from the evidence of PW10 that PW4 did not state before him that the accused Nimai Debnath used to tell her daughter to die if she could not bear the ill treatment given by the accused persons' side.

14. On over all analysis of the evidence of PWs 1, 4 and 10 and other witnesses,

learned trial court came to the conclusion that prosecution failed to establish any case against the accused persons under Section 498A/306 IPC and ultimately acquitted them from the charges leveled against them under Section 498A/306 IPC.

15. Ms. Deb Gupta while urging for setting aside the judgment of acquittal mainly relied upon the evidence of PW4, Smt. Shefali Debnath. This Court has gone through the evidence of PW4 and also re-appreciated the same as discussed by the trial court. According to this Court, the learned trial court did not commit any wrong while coming to the conclusion that this is a fit case for acquittal. By this time it is settled position of law that when two views are possible, the view which supports the case of the accused has to be accepted.

16. A Division Bench of Gauhati High Court in *State of Tripura Vs. Haradhan Majumder and Ors.*, reported in , (2010) 6 GLR 134, particularly paragraphs 22, 23 and 26, in which I was a party, has observed that High Court being a court of first appeal has obviously the power to review the evidence recorded by the learned trial court but at the same time the court has to consider whether the order of acquittal passed by the learned trial court has caused any miscarriage of justice and it has to act with great circumspection and utmost care before ordering reversal of an acquittal. It is further observed that an order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by his acquittal. It would be proper on the part of this Court to reproduce paragraphs 22, 23 and 26 of *Haradhan Majumdar (Supra)* wherein the Division Bench of Gauhati High Court also referred the decision in *State Vs. Vazir Hakki*, , 2005 CrL.J. 2719, as that would help to decide the case in hand.

"22. In *Vazir Hakki (supra)* as relied by Mr. Saha, learned counsel for the respondents, the Apex Court laid down the cardinal rules required to be followed in a case of appeal against the acquittal, i.e., (a) a presumption of innocence in favour of the accused which has been strengthened by the acquittal of the accused by the trial court, (b) if two views are possible, a view favourable to the accused should be taken, (c) that the trial Judge had the advantage of looking at the demeanour of the witnesses, and (d) the accused is entitled to a reasonable benefit of doubt, a doubt which a thinking man will reasonably, honestly and consciously entertain.

23. The same principle is echoed again by the Apex Court in the case of *State of Haryana V. Shibu alias Shiv Narain and Ors.*, , AIR 2008 SCW 5400 wherein it is stated that there is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. As a matter of fact, in an appeal against acquittal, the High court as the court of first appeal is obliged to go into greater detail of the evidence to see whether any miscarriage has resulted from the order of acquittal, though it has to act with great circumspection and utmost care before ordering the reversal of an acquittal. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused

is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that the miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent.

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26. In Venkata Subbarao V. State Represented by Inspector of Police, A.P. , 2007 CriL LJ 754 also observed in para 30 as follows:

"30. In Kalyan Singh V. State of Maharashtra, , (2006) 12 SCALE 577, this court has held:

The High Court while dealing with the matter, in our considered opinion, failed to apply the proper tests in deciding a case where a judgment of acquittal has been recorded. The views of the learned trial Judge cannot be said to be wholly unsustainable. It is now well-known that if two views are possible, the appellate court shall not ordinarily interfere with the judgment of acquittal. We do not, however, mean to lay down the law that the High Court, in a case where a judgment of acquittal is in question, would not go into the evidence brought on records by the prosecution or by the State but we would like to point out that even if the High Court reversed the judgment of acquittal recorded by the trial court, it is incumbent on the High Court to arrive at the conclusion that no two views are possible."

17. The Apex Court in S. Rama Krishna Vs. S. Rami Reddy, (Deceased by LRs), reported in , AIR 2008 SCW 2824 held as under:-

"11. The High Court was exercising its jurisdiction under sub-section (4) of Section 378 of the Code of Criminal Procedure. The appeal preferred by the respondents was against a judgment of acquittal. The High Court should have, therefore, exercised its jurisdiction keeping in view the limited role it had to play in the matter.

12. The High Court itself had come to the finding that the respondents were not interested in getting the matter prosecuted. Despite the same, it allowed their appeal, opining that any dispute between the parties should be decided on merits rather than on technicalities. On what basis such a statement of law was made is not known. No precedent was cited; no reason has been assigned.

The High Court failed to take into consideration the fact that it was dealing with an order of acquittal and, thus, the principle of law which was required to be applied was that, if two views are possible, a judgment of acquittal should not

ordinarily be interfered with.

There exists a distinction between a civil case and a criminal case. Speedy trial is a fundamental right of an accused. The orders passed by the competent court of law as also the provisions of Code of Criminal Procedure must be construed having regard to the Constitutional scheme and the legal principles in mind."

18. In the instant case, as the learned trial court after proper appreciation of the evidence acquitted the accused persons, it would not be proper for this Court, sitting in appeal, to disturb the order of acquittal as the order of the learned trial court is a reasonable one and is based on evidence, particularly when the trial court has considered that there is no direct evidence regarding abetment for committing suicide. Ms. Deb Gupta has fairly submitted that there is no evidence regarding dowry even though there may be some evidence regarding cruelty. This Court has gone through the evidence and according to this Court, there is no direct evidence regarding cruelty and as such, no case under Section 498A IPC is made out. This Court is also of the considered opinion that if a case under Section 498A IPC is not made out, obviously a case under Section 306 IPC is also not made out.

19. In view of the above, the appeal is dismissed.

No order as to costs.