

(2010) 09 GUJ CK 0139
In the Gujarat High Court
Case No : Criminal Appeal No. 32 of 2008

Vithalbhai Nathabhai Sondarva

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 16-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374(2)
Penal Code, 1860 (IPC) — Section 306, 498(A)

Citation : (2010) 09 GUJ CK 0139

Hon'ble Judges : Z.K. Saiyed, J

Bench : Single Bench

Advocate : S.V. Raju, Associates, for the Appellant; R.C. Kodekar, Ld. APP, for the Respondent

Judgement

Z.K. Saiyed, J.—The present appellant has preferred this appeal u/s 374(2) of the Code of Criminal Procedure, against the judgment and order of conviction and sentence dated 15.12.2007 passed by the learned Addl. Sessions Judge, Fast Track Court, Porbandar in Sessions Case No. 46/2006, whereby, the learned Judge has convicted the accused No. 1 present appellant u/s 498(A) and sentenced to undergo R/I for three years and to pay a fine of Rs. 1000/-, in default, to undergo further R/I for two months. The appellant is also convicted u/s 306 of IPC and sentenced to undergo R/I for a period of five years and to pay a fine of Rs 2000/-, in default, to undergo further R/I for six months, which is impugned in this appeal. The Ld. Judge has also ordered that all the sentences shall run concurrently.

2. The brief facts of the prosecution case is as under:

3. It is the case of the prosecution that the deceased Vanitaben had married with present appellant accused No. 1. As per the complaint, the accused No. 1 was husband of deceased, accused No. 2 was brother-in-law of the deceased and accused No. 3 was mother-in-law of the deceased and Vanitaben was residing with accused No. 1 at her matrimonial house. That on 19.4.2006, all the accused

have raised doubt about her character and demanded dowry of Rs. 5000/- and thereby Vanitaben was mentally and physically harassed by the accused and, therefore, she committed suicide on 19.4.2006.

4. Therefore a complaint came to be filed by the complainant before the Kutiyana Police Station. Thereafter, the panchnama of the scene of offence place was drawn in the presence of panch witness and statements of witnesses were recorded and on completion of the investigation, charge-sheet was filed in the Court of learned Judicial Magistrate, Kutiyana. Thereafter, as the case was exclusively triable by the Court of Sessions, the learned Magistrate has committed the case to the Court of Sessions, which was given number as Sessions Case No. 46/2006.

5. Thereafter, the charge was framed at Ex. 5 against the accused. The present appellant and other accused have pleaded not guilty and claimed to be tried.

6. In order to bring the home the charge levelled against the appellant- accused, the prosecution has examined the witnesses and also produced documentary evidence before the trial Court.

7. Thereafter, after examining the witnesses, further statement of the appellant-accused u/s 313 of CrPC was recorded in which the appellant-accused has denied the case of the prosecution.

8. After considering the oral as well as documentary evidence and after hearing the parties, learned Judge vide impugned judgment and order dated 15.12.2007 acquitted the original accused No. 2 and 3 from the charge levelled against them and held the appellant accused guilty to the charge levelled against him u/s 498(A) and 306 of IPC and convicted and sentenced the appellant accused, as stated above.

9. Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence passed by the learned Addl. Sessions Judge, Porbandar, the ori. Accused No. 1 - present appellant has preferred this appeal.

10. Heard Mr. Jayprakash Umot learned advocate for the appellant and Mr RC Kodekar learned APP for the respondent-State.

11. Mr. Jayprakash Umot learned advocate for the appellant has submitted that originally three accused were chargesheeted before the trial Court and at the conclusion of the trial, original accused Nos. 2 and 3 have been acquitted and accused No. 3 is convicted by the learned Judge. Mr Umot learned advocate for the appellant ori. Accused No. 3 has fairly admitted that he is only arguing the matter on the point of quantum of punishment and not arguing the matter on merits. He has also contended that looking to the age of the present appellant, a very harsh conviction has been imposed upon him by the learned Judge, which is required to be reduced. Mr Umot has further submitted that the appellant has already undergone the sentence of 2 years and 9 months. He has further contended that the appellant is a very poor person and he is the only bread

earner member in the family, and therefore, some lenient view is required to be taken in the matter and the sentence imposed upon the present appellant by the learned Judge may be reduced to the sentence as already undergone by the appellant-accused.

12. On the otherside, learned APP Mr RC Kodekar has also fairly submitted that he has obtained the instructions from the Jail Authority and as per jail remarks, the present appellant has already undergone the sentence of more than 50%. Mr Kodekar has also admitted that State has no objection if the sentence is reduced to the extent the sentence already undergone.

13. I have gone through the oral as well as documentary evidence produced on the record. I have read the oral evidence of prosecution witness-complainant and also perused the charge framed against the appellant. Looking to the allegations levelled against the present appellant, they are very serious in nature, but when sufficient period of sentence is already undergone by the present appellant, then, I am of the opinion that looking to the poverty of the appellant, this is a fit case to consider the submissions of the learned advocate for the appellants. In that view of the matter, when the learned advocate Mr Umot appearing for the appellant -accused No. 1 is not arguing the matter on merits but arguing the matter on the point of quantum of punishment, therefore, I am of the opinion that this is a fit case to reduce the sentence.

14. In the result, this appeal is partly allowed. The impugned judgment and order of conviction dated 15.12.2007 passed in Sessions Case No. 46/2006 by the learned Addl. Sessions Judge, Fast Track Court, Porbandar convicting the appellant-accused u/s 498A and 306 of IPC is hereby confirmed. However, the order of sentence sentencing the appellant-accused to undergo R/I for 5 years for the aforesaid offence u/s 306 of IPC, is hereby modified to the extent that instead the appellant-accused is hereby sentenced to undergo the period of sentence already undergone. Rest of the impugned judgment and order is confirmed. The appellant is ordered to be set at liberty forthwith, if he is not required in any other case.