Gujarat High Court
5 Whether It Is To Be Circulated To ... vs State Of ... on 17 July, 2014
R/CR.A/1686/2009 JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL NO. 1686 of 2009

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE K.S. JHAVERI

and

HONOURABLE MR. JUSTICE A.G. URAIZEE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GAUTAMBHAI RAMESHBHAI & 2....Appellant(s)
Versus
STATE OF GUJARAT....Opponent(s)/Respondent(s)

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Appearance:
MR ASHISH M DAGLI, ADVOCATE for the Appellant(s) No. 1 - 3
MR. SONI, APP, for the Opponent(s)/Respondent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE KS JHAVERI
and
HONOURABLE MR.JUSTICE A.G.URAIZEE

Date : 17/07/2014

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE KS JHAVERI) By way of the present appeal under Section 374(2) of the Code of Criminal Procedure, 1973, the appellants have challenged judgement and order dated 31.8.2009 passed by learned Additional Sessions Judge, Ahmedabad City, Ahmedabad, in Sessions Case No. 210 of 2008 whereby the trial Court convicted appellant No. 1 for the offence under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life with fine of Rs. 5000/- and in default to make payment of fine, further rigorous imprisonment for two years has been imposed. Appellant No. 1 was also convicted for the offence under Section 498A of the Indian Penal Code and sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs. 1,000/- and in default to make payment of fine, further imprisonment for six months was imposed.

1.1 Appellant Nos. 2 and 3 were convicted for the offence under Section 498A read with section 114 of the Indian Penal Code and sentenced to undergo imprisonment for one year and to pay fine of Rs. 500/- each and in default to make the payment of fine, to suffer further imprisonment for four months.

2. The case of the prosecution is that deceased Anuben had married earlier and she had two children out of her first marriage. As her husband passed away, she remarried appellant No. 1 Gautambhai Rameshbhai. They used to stay separately along with two children. The marriage of the deceased with appellant No. 1 was against the wish and will of R/CR.A/1686/2009 JUDGMENT appellant Nos. 2 - Rameshbhai Arjanbhai Chavda, father of accused No. 1 and appellant No. 3 Anduben @ Induben Chhaganbhai Bhatiya (father's sister of accused No. 1). They were pressurizing the deceased to get divorce. Accused No. 1 was supporting the same. Therefore, all the accused had unitedly tortured the deceased mentally and physically. It is the prosecution case that on the day of the incident i.e. on 13.1.2008, at about 5.00 p.m., accused No. 1 Gautambhai had quarrelled with the deceased at the residence at Kubernagar F- Ward and with an intention to take her life, he doused kerosene on the deceased and set her ablaze. The deceased suffered burn injuries. She was rushed to the Civil Hospital and during treatment she succumbed to the burn injuries on 18.1.2008. A complaint in that regard was filed against the accused persons.

2.1 On the basis of the complaint, investigation was carried out. Thereafter, accused were arrested. After completion of investigation, charge sheet was filed in the Metropolitan Court. As the case was exclusively triable by the Court of Sessions, it was committed to the Sessions Court. 2.2 Charge was

framed against the appellants-original accused. It was read over and explained to them. They pleaded not guilty to the charge and claimed to be tried. Therefore, prosecution led evidence.

2.3 To prove the case against the accused, the prosecution has examined the following witnesses:

1. Kishorbhai Lakhabhai Gohil, PW-1 at Exh. 12

2. Sarlaben Ghelabhai Chauhan, PW-2 at Exh. 16

3. Ghelabhai Maheshbhai Chauhan, PW 3 at Exh. 18

4. Jivabhai Mithabhai Kataria, PW-4, at Exh. 19

5. Kishorbhai Kalubhai Vanikar, PW-5, at Exh. 25 R/CR.A/1686/2009 JUDGMENT

6. Diwaliben Ghelabhai Parmar, PW-6 at Exh. 27

7. Laxman Keshavbhai Pardhi, PW-7, at Exh. 34

8. Dr. Vinayakrao Vasudevrao Patil, PW-8, at Exh. 42

9. Lachchhuben Khemchandbhai Parmar, PW-9 at Exh. 44

10. Samirbhai Dipakbhai Solanki, PW-10 at Exh. 45

11. Ramjibhai Bhikabhai Desai, PW-11, at Exh. 46 2.4 The prosecution has produced the following documentary evidences:

1. Vardhi obtained by PSO from Civil Hospital at Exh. 20

2. Complaint of Anuben Gautambhai at Exh. 21

3. Panchnama of the place of offence at Exh. 13

4. Inquest panchnama at Exh. 28

5. Panchnama of clothes worn by the accused at Exh. 26

6. Dying declaration at Exh. 35

7. FSL report at Exh. 48

8. Postmortem report at Exh. 43

9. Report of PSO at Exh. 22 2.5 On completion of prosecution evidence, further statements of the accused under Section 313 of the Code of Criminal Procedure, 1973, were recorded. The trial Court, after completion of the trial, passed the judgement and order as aforesaid. Hence the appellants are before us.

3. Learned advocate Mr. Dagli for the appellant has contended that the trial Court has committed error in convicting accused No. 1 under Section 302 of the Indian Penal Code and awarding him imprisonment for life. He has further contended that in the dying declaration, it is not stated about involvement of the appellants with the crime. He further contended that PW-1 Kishorbhai Lakhabhai Gohil, who is panch of inquest panchnama, has not supported the version in the panchanama and was declared as hostile. In his deposition, he R/CR.A/1686/2009 JUDGMENT has denied that police has taken out red colour carbouy, handkerchief and burnt clothes. He has further contended that PW-5 Kishorbhai Kalubhai Vanikar and PW-6 Diwaliben Ghelabhai Parmar have not supported the case of prosecution. He has further submitted that PW-8 Dr. Vinayak Vasudev Patil who performed post-mortem, in his chief examination, has deposed that all over the body about 94% to 96% burns were found and all injuries are ante-mortem. In his cross-examination, he has stated that on account of infection in the burn injuries, septicemia is likely to develop. As per his opinion, cause of death of the deceased is due to septicemia. 3.1 Learned counsel for the appellants has further submitted that there are material discrepancies in the evidences of the witnesses. He has contended that the Doctor who has given treatment to the deceased was not examined. He, therefore, contended that the order of conviction and sentence passed by the trial Court is without appreciating the evidence on record.

3.2 Learned counsel for the appellants has further contended that so far as appellant Nos. 2 and 3 are concerned, there is not an iota of evidence led against them. Appellant No. 1 and deceased were staying separately. In that view of the trial Court has wrongly convicted appellant Nos. 2 and 3 under section 498A read with Section 114 of the Indian Penal Code. 3.3 Learned counsel for the appellants has further contended that the incident took place on 13.1.2008. During treatment, the deceased died on 18.1.2008. Thus, she survived for about 6 days. Looking to the postmortem note and the medical evidence, the cause of death of the deceased is septicemic shock following burns. In that view of the matter, trial Court has wrongly convicted accused No. 1 under Section R/CR.A/1686/2009 JUDGMENT 302 of the Indian Penal Code. In this connection, he has relied on the judgements of the Hon'ble Supreme Court in the case of B.N. KAVATAKAR & ANOTHER VS. STATE OF KARNATAKA reported in 1994 Supp (1) SCC 304 and MANIBEN VS. STATE OF GUJARAT reported in (2009) 8 SCC 796.

4. Learned APP Mr. Soni appearing for the respondent State has supported the judgement and order of the trial Court and contended that the trial Court after taking into consideration the evidences on record, convicted the appellants. Therefore, this Court may not disturb the findings of the trial Court and the appeal is required to be dismissed.

5. We have heard learned advocate appearing for the appellants and learned APP appearing for the respondent State and perused the oral as well as documentary evidences available on record. Looking to the complaint, dying declaration and the evidences of the prosecution witnesses, it is

clear that the deceased died a homicidal death due to the act of appellant No. 1 in pouring kerosene on the deceased and setting her on fire. From the record it is also clear that appellant Nos. 2 and 3 were pressurizing and torturing the deceased to get divorce. In that view of the matter, involvement of the appellants with the offence is proved beyond reasonable doubt.

5.1 Further, we have not lost sight of the fact that the incident took place on 13.1.2008. The deceased died on 18.1.2008 during treatment in the hospital. From the medical report, it is clear that the deceased suffered from septicemia which happened due to burns.

5.2 In the case of B.N. KAVATAKAR & ANOTHER (supra) the Apex Court in a similar case of septicemia where the deceased therein had died in the hospital after five days of R/CR.A/1686/2009 JUDGMENT occurrence of the incident in question, converted conviction under Section 302 of the Indian Penal Code to under Section 326 and modified the sentence accordingly. Paragraph No. 9 of the said judgement is reproduced as under:

> "9. The next question that comes up for our consideration is what is the nature of offence that the appellants have committed. The Medical Officer who conducted autopsy on the dead body of the deceased has opined that the death was as a result of septicemia secondary to injuries and peritonitis. As we have indicated above, the deceased died after five days of the occurrence in the hospital. On an overall scrutiny of the facts and circumstances of the case coupled with the opinion of the Medical Officer, we are of the view that the offence would be one punishable under Section 326 read with Section 34 IPC."

5.3 The Hon'ble Apex Court in the case of MANIBEN (supra) has in paragraph Nos. 18, 19 & 20 observed as under:

> "18. The deceased was admitted in the hospital with about 60% burn injuries and during the course of treatment developed septicemia, which was the main cause of death of the deceased. It is, therefore, established that during the aforesaid period of 8 days the injuries aggravated and worsened to the extent that it led to ripening of the injuries and the deceased died due to poisonous effect of the injuries.
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> 19. It is established from the dying declaration of the deceased that she was living separately from her mother-in-law, the appellant herein, for many years R/CR.A/1686/2009 JUDGMENT and that on the day in question she had a quarrel with the appellant at her house. It is also clear from the evidence on record that immediately after the quarrel she along with her daughter came to fetch water and when she was returning, the appellant came and threw a burning tonsil on the clothes of the deceased. Since the deceased was wearing a terylene cloth at that relevant point of time, it aggravated the fire which caused the burn injuries.
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> 20. There is also evidence on record to prove and establish that the action of the appellant to throw the burning tonsil was preceded by a quarrel between the

> deceased and the appellant. From the aforesaid evidence on record it cannot be said that the appellant had the intention that such action on her part would cause the death or such bodily injury to the deceased, which was sufficient in the ordinary course of nature to cause the death of the deceased. Therefore, in our considered opinion, the case cannot be said to be covered under clause (4) of Section 300 of IPC. We are, however, of the considered opinion that the case of the appellant is covered under Section 304 Part II of IPC."

6. In the present case, we have come to the irresistible conclusion that the role of the appellant is clear from the dying declaration and other records. However, the point which has also weighed with this court are that the deceased had survived for around 6 days in the hospital and ultimately died on account of septicemia. In that view of the matter, we are of the opinion that the conviction of appellant No. 1 under section R/CR.A/1686/2009 JUDGMENT 302 of Indian Penal Code is required to be converted to that under section 304 Part I of Indian Penal Code and conviction under section 498 (A) is upheld.

6.1 So far as appellant Nos. 2 and 3 are concerned, we uphold their conviction under Section 498A read with Section 114 of the Indian Penal Code. However, looking to their old age, sentence awarded by the trial Court is required to be reduced.

7. In the result, the appeal is allowed in part. Conviction of appellant No. 1 under Section 302 of the Indian Penal Code is set aside. The appellant-original accused No. 1 is convicted under Section 304 Part I of the Indian Penal Code. The sentence of imprisonment for life is reduced to rigorous imprisonment for 10 years with fine of Rs. 5000/- and in default of payment of fine, appellant-original accused No. 1 is ordered to suffer simple imprisonment for three months. His conviction and sentence under Section 498A of the Indian Penal Code is confirmed.

7.1 Conviction of appellant Nos. 2 and 3 under Section 498A r.w.s. 114 of the Indian Penal Code is confirmed. However, looking to their old age, we reduce the sentence to the period already undergone by them. Appellant Nos. 2 and 3 are on bail. Their bail bonds stand cancelled. 7.2 The judgement and order of the trial Court dated 31.8.2009 passed by learned Additional Sessions Judge in Sessions Case No. 210 of 2008 is modified to the aforesaid extent.

(K.S.JHAVERI, J.)

R/CR.A/1686/2009 JUDGMENT

(A.G.URAIZEE,J)

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