

# SUPREME COURT OF INDIA

Sharadbhai Jivanlal Vaniya

Vs.

State of Gujarat

Crl.A.No.810 of 2004

(Harjit Singh Bedi and Chandramauli Kr. Prasad,JJ.,)

17.02.2011

## ORDER

1. The appellant was put on trial for commission of the offence under Sections 498-A and 304-B read with Section 114 of the Indian Penal Code. Additional Sessions Judge, Rajkot, by judgment dated 22nd of January, 1997 passed in Sessions Case No.138 of 1991, acquitted the appellant. Aggrieved by the same, State of Gujarat preferred Criminal Appeal No. 335 of 1997 and the High Court by the impugned judgment dated 6th of May, 2004 and 23rd June, 2004 set aside the order of acquittal and convicted the appellant for offence under Section 306 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for five years. He was also held guilty of offence under Section 498-A of the Indian Penal Code and sentenced to undergo rigorous imprisonment for one and a half years.

2. Aggrieved by the same, the appellant has preferred this appeal.

3. According to the prosecution, appellant had married Binaben, the daughter of Jaysukhlal about two years before her death. She was ill-treated by the appellant and his mother Jayaben for demand of dowry and for that reason on 2nd of June, 1990, Binaben committed suicide by setting herself on fire. A case was registered and after investigation, the police submitted charge-sheet against the appellant. Ultimately he was committed to the Court of Sessions where he was charged of offence punishable under Section 498-A and 304-B read with Section 114 of the Indian Penal Code. The Trial Court on appreciation of evidence held that there is no evidence of cruelty or harassment in connection with demand of dowry and accordingly acquitted him on both the counts. On appeal by the State, as stated earlier, the High Court reversed the finding of acquittal and convicted the appellant as above. While reversing the judgment of acquittal, the High Court has relied upon a letter (Ex.-21) written by the deceased to her sister-in-law. In the said letter, the deceased has stated that her husband had beaten her and asked her to take divorce. Further the appellant is pressing hard to leave the matrimonial home and go to Jamnagar, her parental place.

4. Mr. Nanavati, learned counsel appearing on behalf of the appellant submits that the letter which forms the basis of conviction by the Appellate Court was never produced during the

investigation and for the first time produced by the witness during the course of trial, when she appeared as a witness. It is submitted that authenticity of the letter in question has not been proved and hence the appellate Court ought not to have reversed the judgment of acquittal and convicted the appellant. In support of the submission, reliance has been placed on a decision of this Court in *Anand Kumar vs. State of Madhya Pradesh*<sup>1</sup> and our attention has been drawn to the following paragraph of this judgment :

9. ".... ..Moreover, this letter had not been produced before the police during the course of the initial investigation and had been handed over to the police after several months. This fact, as also a reading of the letter, indicates that this was a concocted piece of evidence and the work of a legal mind, as no person would write such a letter meeting all legal requirements for implicating himself and his near relatives, in a claim for dowry."

It has also been pointed out that view taken by the Trial Court was one of the possible views which the High Court in appeal ought not to have reversed.

5. Ms. Jesal, learned counsel appearing on behalf of the respondent, however, submits that the letter written by the deceased to her sister-in-law clearly shows cruelty and harassment due to demand of dowry and the High Court rightly reversed the order of acquittal to that of conviction.

6. We have bestowed our consideration to the rival submissions and we find substance in the submission of Mr. Nanavati and the judgment relied on supports his submission.

7. As observed earlier, the High Court reversed the finding of acquittal mainly relying on the letter written by the deceased to her sister-in-law. The said letter was not produced during the course of investigation and there is nothing on record to establish its authenticity. It is produced by the prosecution only during the course of evidence. In our opinion, the order of acquittal ought not to have been reversed relying on unauthenticated letter. We are further of the opinion that the view taken by the Trial Court while acquitting the appellant was one of the possible views. In view of what we have observed above, we feel it unsafe to sustain the conviction of the appellant and give him the benefit of doubt. The appellant is on bail. He shall be discharged of his bail bonds.

8. In the result, the appeal is allowed, impugned judgment of conviction and sentence is set aside with the direction aforesaid.