SUPREME COURT OF INDIA

Patel Maheshbhai Ranchodbhai

Vs.

State of Gujarat

Crl.A.Nos.1973-1974 of 2008

(M.Y. Eqbal and Abhay Manohar Sapre JJ.)

26.09.2014

JUDGMENT

M.Y. EQBAL, J.

1. This is an exceptional case where this Court has taken serious note, the way the Sessions Judge disposed of the Sessions case within a period of nine days, which can be briefly narrated herein-below: |29.12.2004: |Charges were framed and the case was adjourned | | |to 1.1.2005. | |1.1.2005: |Prosecution produced list of 12 witnesses | |7.1.2005: |The prosecution produced 5 witnesses, who were | | |examined, and remaining dropped. On the same | | |day, accused were examined under Section 313, | | |Cr.P.C., arguments heard and judgment was | | |delivered acquitting all the accused. | All accused were acquitted, except the main accused (husband), who was convicted under section 498A, IPC to the period already undergone since he remained in jail for three days. In the appeal arising out of said judgment at the instance of the State, the High Court in the impugned judgment dated 16.6.2008 has also taken note of this fact and finally reversed trial court™s findings of acquittal against all the accused and convicted the present appellants-accused of the charges under Section 306 read with Section 114 of Indian Penal Code, as also convicted appellant- accused no.2 (father-in-law of the deceased) and appellant-accused No.3 (mother-in-law of the deceased) for the offence punishable under Section 498A of the Indian Penal Code. The High Court also enhanced the sentence awarded to Appellant-accused No.1 (Husband of the deceased) for the offence punishable under Section 498A of Indian Penal Code. The

appellants have been directed by the High Court to undergo rigorous imprisonment of seven years with total fine of Rs. 15,000/-. The trial court had acquitted all the accused except accused no.1 (husband), who was convicted for offence under Section 498A, IPC and sentenced him for three days simple imprisonment, which was already undergone by him.

2. The facts leading to the prosecution story pertains to the village Panchot of Mehsana District, Gujarat, where on 16.12.1997 suicide was committed by one lady Renukaben Maheshbhai Patel, who was married to appellant no.1 for two years before the incident. From this wedlock, couple had a female child. Appellant no.1-husband of deceased had been serving in Africa and before three months of the incident, he had come to village Panchot. It is alleged that appellant/accused No.3 (mother-in-law of deceased) was doubting the character of the deceased and subjected her to mental cruelty, and the deceased was also constantly beaten by her husband. Prosecution case is that preceding three days of the incident, all the three accused persons, who are appellants before us, were extremely harassing the deceased and upon instigation of appellant nos.2 and 3, husband-appellant no.1 had been beating deceased Renukaben, which continued for three days. On account of this and compelling circumstances, on 16.12.1997, at about 13.30 hours, Renukaben, at her in-laws house, poured kerosene of the quantity of five litres upon her and ignited herself and consequently she started burning in flames. Her husband (1st appellant) immediately tried to save the deceased and it has come to the evidence that while making such an attempt, the 1st appellant also suffered injuries. Thereafter, she was taken to General Hospital of Mehsana in ambulance and was treated by Dr. A.K. Kapadia and he found burns on all over her body, deep in nature.

3. In the meantime, Mehsana Taluka Police Station was informed and ASI PW4 reached at the Emergency of the Hospital where Renukaben was admitted and her treatment was going on. The Doctor who was attending Renukaben requested ASI Hargovanbhai to record her statement. The said police official, therefore, through his writer recorded the statement of victim Renukaben in a manner that he asked questions, which she answered and he got it noted through his writer. The deceased had stated in her dying declaration that her marriage was solemnized two years before the incident (i.e. in the year 1995) and out of that wedlock she had a female child. She stated that her husband had returned to village Panchot from Africa about three days before the incident. In the statement, she narrated the story that she was harassed by

the appellants on account of suspicion on her character and due to mental as well as physical cruelty, she committed suicide. According to aforesaid police official (PW4), Renukaben was in a fit mental condition to give answers and in token of it, Doctor-in-charge put his signature on the statement and thereafter thumb impression of her leg was obtained since fingers of both of her hands were distorted by burning. Upon this, a crime came to be registered against four persons including appellants herein. The fourth accused was sister-in-law. Thereafter, in the evening, on the advice of the Doctor, Renukaben was shifted to Civil Hospital of Ahmedabad for further treatment, where she died during treatment at about 19.10 hours.

4. Thereafter, charge-sheet came to be submitted against all the four accused in the Court of Chief Judicial Magistrate, Mehsana, who committed the case to the Court of Sessions at Mehsana. Sessions Judge, Mehsana framed charges against all the accused on 29.12.2004 for the offences punishable under Sections 498A, 306, 201 and 114 of the Indian Penal Code. On 1.1.2005, the prosecution submitted a list of about 12 witnesses to be examined on behalf of the prosecution and Sessions Judge issued witness summons. On 7.1.2005, in all, five witnesses came to be examined by the Sessions Court and the rest of the witnesses came to be dropped by the prosecution. Out of the five witnesses, two main witnesses i.e. maternal uncle and maternal aunt of the deceased turned hostile. Despite this, the prosecution submitted closing purshis on the very same day and the remaining witnesses against whom witness summons were already issued, came to be dropped. On 7.1.2005, Application Exhibit-7 was submitted on behalf of the prosecution by which the prosecution submitted a list of 17 documents to be produced along with the necessary documents. However, Sessions Judge exhibited only four documents. On 7.1.2005 itself, further statements of the accused under Section 313 of the Code of Criminal Procedure came to be recorded. On the very same day, the arguments on behalf of the prosecution as well as the defence came to be heard by the Sessions Judge and on that day itself, Sessions Judge, Mehsana acquitted all the accused for the offences punishable under Section 306 read with Sections 114 and 201 of the Indian Penal Code and also acquitted accused nos.2 to 4 for the offence punishable under Section 498A, IPC and convicted the accused no.1-husband for the offence punishable under Section 498A, IPC by imposing punishment of three days simple imprisonment and fine of Rs.3,000/-. At this stage, it is pertinent to note that since accused no.1 was in custody as undertrial prisoner for three days, he was not required to surrender to jail for punishment on depositing the amount of fine imposed.

5. Dissatisfied and aggrieved by the decision of the trial court, the State preferred Criminal Appeal No.1346 of 2005 against all the four accused, which was admitted and the High Court issued suo motu notice for revising the sentence awarded to accused no.1 (husband) and the same was registered as Criminal Revision Application No.642 of 2007. After thoroughly appreciating entire evidence on record with reference to appeal against acquittal, enhancement for revision application and also with reference to the application filed by the accused for adducing additional evidence, the High Court took into consideration the broad and reasonable probabilities of the case arising out of the re-appreciation of the evidence on record and other vital circumstances surrounding the essence of the trial. After hearing learned counsel on either side and re- appreciating the evidence, the Division Bench of the High Court allowed the appeal of the State and held appellants herein guilty and convicted them of the charges under Section 306 read with Section 114, IPC and also convicted accused no.2 and 3 for the offence punishable under Section 498A, IPC. The High Court, allowing aforesaid suo motu revision application, enhanced the imprisonment of appellant/accused no.1 (husband) to RI of seven years.

6. Hence present appeals by special leave by the accused persons, viz., husband, father-in-law and mother-in-law of the deceased.

7. Mr. Nikhil Goel, learned counsel appearing for the appellants strongly submitted that the High Court felt anguished by the fact that the prosecution had dropped various witnesses and the trial court examined these 5 witnesses and completed the trial within one day. Learned counsel vehemently contended that instead of remanding the matter back and without allowing any further evidence, the Division Bench of the High Court upturned the acquittal based solely on Exhibit 14, the dying declaration. It is further contended that the deceased was taken to the Civil Hospital of Mehsana at or about 3.00 PM and was shifted at 6.00 PM to Ahmedabad at a distance of about 50 kms. In a small place like Mehsana, it would not have been difficult for anybody to inform the Executive Magistrate within this gap of four hours. Neither the Doctor nor the writer was examined. In fact, the ASI (PW4), who was literate and was able to write, had no occasion to take services of a writer and then not to examine him. It is further contended that there was no certificate about the competency of the deceased to depose. The burns were shown to the extent that the thumb impression of the hand also could not be taken. The dying declaration was at variance to the other evidence.

8. Learned counsel further contended that even assuming that PW4 read with Ex.14 can be believed as an admissible piece of evidence, the contents thereof cannot be said to attract the ingredients of either Section 498A or Section 306. In the dying declaration itself, the deceased had mentioned that when she tried to burn herself, it was the 1st appellant who immediately tried to save her. The evidence of PW5 shows that the 1st appellant suffered burn injuries while making an attempt to save the deceased. It is further contended that the evidence of PW2 and PW3 also speak about the mental frame of the deceased as also a possible reason for which she made an attempt to commit suicide. PW2 and PW3, maternal uncle and maternal aunt, have raised the deceased as their own child in an eventuality where the parents of the deceased were mentally unstable. It was submitted that dying declaration may be sufficient to convict the husband but may not be sufficient for conviction of other accused under Section 306 IPC.

9. Lastly, learned counsel submitted that once having found that the evidence was not properly lead by the prosecution, the High Court ought to have balanced the rights of the accused and the High Court has erred in not remanding the matter back to the trial court. The availability of other evidence would have also enured to the benefit of the appellants. Learned counsel further submitted that such an opportunity was denied to the present appellants and the conviction was returned purely on conjectures and surmises.

10. Learned counsel relied upon the judgment pronounced by this Court in Govindaraju vs. State, (2012) 4 SCC 722, Surinder Kumar v. State of Haryana, (2011) 10 SCC 173 and Ramesh Kumar v.Satte of Chhattisgarh, (2001) 9 SCC 618.

11. Per contra, learned counsel appearing for the State contended that PW2 and PW3, both maternal uncle and maternal aunt of the deceased, did not support the prosecution case, but the prosecution case was amply proved by the dying declaration, which is the correct depiction of the incident, straightway from the mouth of the deceased soon after the incident. It is further contended that in the present case, when there is an overwhelming evidence by which the prosecution case is amply proved, the question of additional evidence, and that too, necessary additional evidence would not arise at all. What had been averred in the application appears to be an afterthought defence of the accused, which could not be placed during trial.

12. The learned counsel drew our attention to paragraph 31 of the impugned judgment stating that this is a fit case to invoke Section 113-A of the Indian Evidence Act, 1872. The accused have failed to discharge the burden upon them to explain the death of the deceased. On the contrary, they admitted that the death of the deceased was a suicidal one. In ordinary circumstances, the lady having a female child of two years, would not resort to suicide only because her husband stated to her that it would take little time to take her to Africa along with him. It has been contended by the learned counsel that the High Court, therefore, rightly came to the conclusion that the appellants committed not only the offence under Section 498A but also under Section 306 of the Indian Penal Code.

13. After hearing learned counsel for the parties and perusing the papers including the impugned order, we are in conformity with the opinion and conclusion of the Divison Bench of the High Court. The courts are expected to perform its duties and functions effectively and true to the spirit with which the courts are sacredly entrusted with the dignity and authority and an alert judge actively participating in court proceedings with a firm grip on oars enables the trial smoothly to reach at truth. In the present case, the trial court has failed to perform its duties to reach to the real truth and to convict the accused. As observed by the High Court, we are also at pain to notice that the role of prosecuting agency during the trial along with the trial judge appears to be dubious. Besides dying declaration, there was available evidence on record to prove the factum of cruelty and death of Renukaben, but it was not brought on record by the prosecuting agency. Instead, all concerned were in hurry to finish the case in a day. Prosecution submitted a list of 17 documents to be produced and exhibited, but the trial Judge exhibited only four documents and prosecution also did not raise any objection.

14. As observed by this Court in the case of Zahira Habibulla Sheikh & anr. vs. State of Gujarat & ors., (2004) 4 SCC 158, the prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and Courts could not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness. Court has a greater duty and responsibility i.e. to render justice, in a case where the role of the prosecuting agency itself is put in issue and is said to be hand in glove with the accused, parading a mock fight and making a mockery of the criminal justice administration itself. As succinctly stated in

Jennison vs. Baker (All ER p. 1006d) The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope. Courts have to ensure that accused persons are punished and that the might or authority of the State is not used to shield themselves or their men. It should be ensured that they do not wield such powers which under the Constitution have to be held only in trust for the public and society at large. If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil trying to hide the realities or covering the obvious deficiencies, courts have to deal with the same with an iron hand appropriately within the framework of [pic]law. It is as much the duty of the prosecutor as of the court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice.

15. We are of the opinion that the Division Bench of the High Court has correctly re-appreciated the evidence on record and reversed the acquittal decision of the trial court. We concur with the findings of the High Court that in the present case, prime duty of the trial court to appreciate the evidence for search of truth is abandoned and in a hurry to dispose of the case or for some other reason, the Sessions Judge had disposed of the trial and acquitted the accused.

16. In view of the above, we do not find any reason to interfere with the impugned decision of the High Court. The Criminal Appeals are accordingly dismissed and the bail bonds of the accused-appellants stand cancelled. They shall surrender forthwith to serve out the remaining period of the sentence, failing which, the trial court is directed to take appropriate steps for sending them to prison to undergo the remaining period of sentence.