

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1336 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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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 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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ASHISH BHUPENDRABHAI GANDHI

Versus

STATE OF GUJARAT

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Appearance:

MR AD SHAH for Petitioner

MR B.D.DESAI, ADDL.PUBLIC PROSECUTOR for  
Respondent-State

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CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 30/04/96

ORAL JUDGEMENT

The appellant came to be convicted for the offences punishable under Section 304-B, 306 and 498-A of

the Indian Penal Code by the learned Additional Sessions Judge, City Sessions Court, Ahmedabad, in Sessions Case No.31 of 1993 vide the judgment of conviction and sentence dated November 9, 1993. He has been sentenced to the R.I. for 7 years and to a fine of Rs.200 in

default to the further R.I. for 4 months and to the R.I. for six months and to a fine of Rs.500 in default to a further R.I. for one month and to the R.I. for one year and to a fine of Rs.500 in default to the R.I. for one month respectively. The sentences are ordered to run concurrently. The said judgment of conviction and sentence has been brought in challenge by the appellant-accused in the present criminal appeal before me.

2 Deceased-Mamta happened to be the daughter of Navinchandra Parikh, P.W. No.2 Exh.18. The betrothal of Mamta with the appellant-accused, Ashish Gandhi, came to made on December 8, 1991. The marriage had taken place in Ahmedabad on February 20, 1992. Mamta had stayed in Ahmedabad at her matrimonial house from February 20, 1992, to May 15, 1992. During this period of two months and 25 days, according to the case of the prosecution, Mamta was not happy in the matrimonial house. She goes to Delhi on May 15, 1992, in company of her relation and stays at the parental house upto June 5, 1992. On the said date she leaves Delhi for Ahmedabad and reverts back to the matrimonial house. On June 22, 1992, the appellant-accused had sent a letter to the parents of Mamta saying in brief that they should rush down to Ahmedabad immediately and they should not even try to contact anybody at Ahmedabad on telephone. The parents had got a ticket booked to rush down to Ahmedabad by train. Anyhow, the above said proposed journey was postponed. According to the case of the prosecution, meanwhile, Mamta had sent one letter dated June 26, 1992, to her parents. It should be noticed that this letter does not come as evidence by the prosecuting agency. On July 3, 1992, the parents of Mamta had received a telephonic message that Mamta has committed suicide and therefore they should rush down to Ahmedabad. Accordingly, they reached Ahmedabad by air. The First Information Report came to be lodged at a belated stage, on July 7, 1992. The offences came to be registered not only against the accused but against his mother also. The accused persons had pleaded not guilty to the charges for the alleged commission of the above said offences. The learned trial Judge has come to the conclusion that the mother, accused no.2, was required to be acquitted

but, so far as appellant-accused is concerned, the said offences are duly established. This view of the learned Sessions Judge has resulted in the judgment of conviction and sentence as stated above.

3 The learned Counsel Mr Ashok Shah who appears on behalf of the appellant urges that if the evidence is read in juxtaposition to the ingredients of the offences for which the appellant accused stood charged and for which ultimately he has been convicted, it becomes apparent that the evidence falls short and therefore the appellant-accused could not have been convicted.

4 Anyhow, Mr B.D. Desai, the learned Government Counsel, on the other hand urges that evidence, though brief, is clinching and that the learned Sessions Judge was perfectly justified in coming to the conclusion that all the offences against the appellant-accused have been duly established. Therefore, according to the learned Government Counsel the appeal requires a dismissal.

5 When one takes a view at the prosecution evidence in the light of the legal requirement and ingredients of the offences to be established, it appears that the evidence, as urged by the learned Counsel Mr Shah for the appellant appears to be falling short.

6 So far as offence punishable under Section 304-B is concerned, needless it is to say that it is in respect of a dowry death. A bare perusal of the provisions contained under section 304B would go to show that four salient features find their place in the said section and before a Court of law comes to the conclusion that the offence punishable under section 304-B is duly established, the four ingredients of the section shall have to be established. Firstly, there should be death of a woman caused by any burns or bodily injury other wise than under normal circumstances. This should happen within seven years of hear marriage. It should be shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband. Lastly and vitally, this harassment or cruelty should be in connection with any demand for dowry from the husband or her relation and aimed at the victim or her relation. Unless and until these four ingredients are established, the offence punishable under section 304-B could not be established.

6 The offences punishable under section 306 has been termed as abetment of suicide. It is said that whoever

abets the commission of suicide committed by any person shall be punished with imprisonment of either description for a term which may be extended to 10 years. Section 306 therefore provides for punishment. Coming to Section 498-A, it requires to be appreciated that it speaks of cruelty by husband or the relatives of the husband. The first part of the section provides for the punishment for the person, namely, the husband or the relative of the husband of a woman who subjects the woman to cruelty. Explanation makes it clear as to what meaning would be given to the term 'cruelty.' Explanation (a) says that any wilful conduct which is of such a nature as is likely to drive the woman to commit the suicide or to cause grave injury or danger to life, limb or health would amount to cruelty. Explanation (b) says that cruelty would mean the harassment of the woman with a view to coerce her or any person related to her to meet any unlawful demand of any property or valuable security.

7 The evidence brought in by the prosecution shall have to be examined in view of the above said ingredients which are apparent for the three said offences.

8 Firstly, there is evidence of father Navinchandra Parikh, PW 2, Exh.18. He gives the graphics regarding the dates of betrothal, living of the couple together before the marriage, the actual date of marriage, a conjugal stay at Ahmedabad, a short return to Delhi, stay at Delhi and return of the deceased Mamta to the matrimonial house at Ahmedabad. There does not appear to be any controversy in this respect. Suffice it would to say that before betrothal the couple had met each other and had also moved in company of each other. They appear to be close and intimate during this period also. After the marriage which took place on February 20, 1992, Mamta stays at Ahmedabad upto May 15, 1992. This would be a brief period falling short of three months. Later on she goes to Delhi. The other things are clear. She comes back and ultimately on July 3, 1992, she puts an end to her life by burning herself and the First Information Report was lodged on July 7, 1992. This is all what the father says regarding the details of the married life of Mamta with the appellant-accused.

9 Father Navinchandra has stated that according to the caste custom he had given golden ornaments weighing about 8 tolas along with 23 pairs of cloths, wrist watch and certain utensils. According to father Navinchandra, when Mamta had returned to Delhi on May 15, 1992, she had an occasion to talk to her mother. According to father Navinchandra, when Mamta goes back to Delhi, she appeared

to be slightly worried and nervous. Mamta had a talk with her mother during which she had alleged that her husband used to rebuke her by saying that she was not good at cooking and that she was not a forward and modern girl and that her husband was demanding an amount of Rs.25,000 to Rs.30,000 from her. The father says that on her turn his wife had appraised him regarding this but he had never cared to ask anything to Mamta. This say of father Navinchandra does not appear to be probable. Indeed a father in the Indian Society may not talk to his daughter in respect of certain matters which could be described as confidential, personal or medical. But, here, there was a demand coming from the son-in-law but yet, the father does not enquire anything in this respect. This appears to be not only improbable but unusual.

10 Father Navinchandra says that upon a letter of the appellant-accused which came to be received by him on June 22, 1992, they had decided to go to Ahmedabad and they had booked for the rail journey also. Anyhow, this was postponed. According to father Navinchandra, later on they had received one letter from Mamta in which she had complained that she was being accosted not only by her husband but the mother-in-law and she was threatened of divorce and there was a demand of Rs.25,000/-. Strangely enough, this letter does not come before the Court. The explanation which should be recognised as an usual one is that it is either misplaced or lost. This does not appear to be believable because, after having received the letter from the son-in-law and after having cancelled a rush journey to Ahmedabad the parents of Mamta would not be so negligent as to misplace or to lose the important letter in which the daughter makes serious allegations and from which it could have been seen that the daughter was not happy at the matrimonial house. The non-production of this important letter therefore causes serious doubts in the case of the prosecution.

11 Father Navinchandra further says that they were scheduled to go to Ahmedabad on July 3, 1992, but at about 10.30 AM they had received a telephonic message from Vinodhbhai saying very clearly that Mamta is no more and therefore they had reached Ahmedabad by air. Father Navinchandra says that the police had contacted him on 3rd and 4th July 1992 but nothing was said before the police. Ultimately, on 7th July 1992 the complaint was given to the police. During the cross-examination as well as in the examination-in-chief father Navinchandra says that crucial letter from Mamta could not be traced from the house.

12 It is also the say of father Navinchandra that Mamta had made a complaint that some girl sent a love letter to Ashishkumar, the appellant accused but the said letter was destroyed by the appellant-accused. In nutshell therefore the evidence of father Navinchandra is that Mamta had some talk with her mother during which she had complained of mental and physical cruelty and demand of an amount of Rs.25,000 to Rs.30,000. Queerly enough, father Navinchandra does not enquire anything in person from girl Mamta. All these he says in a belated complaint on 7th July 1992 after the cremation of his daughter.

13 Mother Arunaben, PW 4, Exh.35, has testified that Mamta had reached Delhi on May 15, 1992, and on that occasion she appeared to be somewhat weak and confused. According to her, she had enquired regarding the reason of this mental and physical condition and Mamta had given her certain details. According to mother Arunaben, Mamta had told her that Ashish used to tell her that she is not a modern and forward girl and she does not know English language quite well. The second say of Arunaben was that according to Mamta her mother-in-law used to accost her for the kitchen work. Thirdly, according to Arunaben, Mamta had informed her that her mother-in-law used to give her certain tablets in the morning and in the evening and that this medication caused constant headache to her. It is also the say of mother Arunaben that Mamta had told her that the appellant-accused was demanding an amount of Rs.25,000 as the dowry. Lastly, according to mother Arunaben, Mamta had complained that the appellant-accused was in love with some another woman or a girl. This is the say of mother Arunaben during the examination in chief.

14 She also says that after the return of Mamta to Ahmedabad there was one letter from her complaining of mental cruelty and the threat of divorce. There was also a complaint once more regarding the administration of certain drug or medication. She says not only in the cross-examination but in the examination in chief also that just after the cremation and on the next day the police had approached her but she had not given her statement to the police and for the first time her statement came to be recorded on July 7, 1992. During the cross-examination mother Arunaben has stated that even after reaching Ahmedabad on July 3, 1992, after the death of Mamta they had never told anybody regarding any mental or physical cruelty meted to Mamta. In the same way they had not any talk with anybody in respect of the

demand of an amount of Rs.25,000. This say of mother Arunaben makes it clear that even after suicidal death of her daughter she had preferred not to say anything to anybody in respect of the probable cause of suicide. She also says that though she was knowing the details furnished to her by Mamta, she had not informed anybody regarding the demand or the administration of some unknown drug or medication. Going a step further, Arunaben admits in the cross-examination that till her statement came to be recorded by the police on July 7, 1992, she had even not informed her husband regarding the aforesaid administration of some drugs or medication. She also says that she had not any talk even with her husband regarding the letter which was allegedly received by the appellant-accused from a girl friend. Therefore, if the evidence of mother Arunaben is to be accepted, even father Navinchandra would not be able to know anything regarding the alleged love affair of appellant-accused with some another girl and the administration of some medication. This appears to be unbelievable. No mother would wait till the daughter commits suicide and the occasion to give a statement before the police arrives. It appears that all what Arunaben says regarding the forcible administration of some medication or drug and some alleged love letter received by the accused-husband could be an afterthought.

15 Heavy reliance is being placed on sworn testimony of Shradhaben Shah, P.W. No.4, Exh.34, who happens to be the sister of the deceased residing at Ahmedabad. Her say is that just after marriage Mamta had gone to her house on three different occasions. Once Mamta had a visit of her house in the company of her husband. On the second occasion, Mamta's mother-in-law was in her company. But during the last and third visit which was before a week of Mamta's going to Delhi, she had complained of ill-treatment. Mamta was in tears and she had stated that accused was making a grievance that she was not able to speak in English and she did not appear to be a forward girl. Mamta had also told her that there was a threat coming from the appellant-accused saying that if there is no improvement, the appellant-accused would be required to take "some steps." According to Shradhaben, she had consoled her saying that she is going to Delhi and she could have a talk in this respect with their father. Therefore all what Shradhaben says in the examination-in-chief is only in respect of the say of the husband that Mamta was not able to speak English well with him and his friends. The second aspect was that the husband had told her that if she does not show any improvement, the husband would be taking some step.

16 During the cross-examination Shradhaben has admitted that she has never stated before the police that Mamta was in tears when she had met him. She also admits that she had not stated anything before the police regarding the consolation and any advice that she would reveal everything to her mother. Lastly, Shradhaben says in the concluding portion of her evidence that she had said before the police candidly that she does not know as to why and how Mamta was obliged to put an end to her life. This is a startling statement coming from Shradhaben. If she had the impression that the above said talk which the accused had with Mamta could be the cause of the suicide committed by her sister, she could have stated so very well before the police. She could at least say that Mamta was being subjected to mental and physical cruelty and there was also a demand from her husband and probably these all could constitute the circumstances under which the Mamta would be compelled or obliged to put an end to her life.

17 Anyhow, evidence of Shradhaben falls short of saying this. This is the prosecution evidence on the basis of which the appellant-accused has been convicted. Even at the cost of repetition by way of recapitulation it must be said that the father was not made aware regarding the forcible administration of drugs or the alleged letter received by appellant-accused from a girl friend till the statement of mother Arunaben is recorded by the police. Father Navinchandra though knows of some trouble in the married life of the couple, does not enquire anything including the demand of dowry which he was required to pay and to arrange for. Evidence of Shradhaben only goes to show that appellant-husband had rebuked Mamta saying that she was not a modern girl but this was not assigned as a cause for suicide. The ingredients of the offences punishable under section 304-B, 306 and 498-A of the Indian Penal Code examined above when are tried to be applied to this evidence, it is clear that they are not satisfied. The demand of dowry is not established. Abetment of suicide is also not established. Subjecting Mamta to cruelty for the purpose of effecting some demand also is not established. The important letter allegedly received by the parents from Mamta after she returned to Ahmedabad and after the parents received a letter from the appellant-accused does not forthcome before the Court. At the most, it could be said that there could be some unhappy note during the short married life possibly purely temporarily between the husband and the wife but this cannot be said to be



the circumstance which would drive Mamta to commit suicide. It is therefore clear that the requisite ingredients of the offences for which the appellant-caccused came to be convicted have not be established. The judgment of conviction and sentence rendered by the Court below is therefore cannot be sustained. The present appeal therefore requires to be allowed and the same is hereby accordingly allowed. The appellant-accused is hereby acquitted of all the offences of which he has been found guilty and has been convicted and sentenced. The fine if paid shall be refunded. The appellant accused is behind the bars since last about four years. He should be released forthwith if not required for any other criminal case or proceedings.

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