

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 770 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 - No
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STATE OF GUJARAT

Versus

MOTIBA W/O. RUPSINH JAWANSINH RATHOD

Appearance:

MR. DN PATEL, APP for Petitioner

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

Date of decision: 16/10/98

C.A.V. JUDGEMENT (Per: R.P.Dholakia,J.)

State has preferred this appeal against the order of acquittal recorded by the learned Additional Sessions Judge, Himmatnagar on 16-5-1997 in Sessions Case No.128 of 1997. The respondent-accused was charged and tried for the offences punishable under Secs.498-A and 306 of

Indian Penal Code.

2. The prosecution case in short is that on 26-3-1992, Vinabha, wife of Vikramsinh Rupsinh filed one complaint before Police Inspector, Prantij Police Station stating that her marriage was solemnized with one Vikramsinh Rupsinh at Sonasan Village eight years prior to the incident. After marriage, she was residing at the house of her in-laws. As she had no issue, her mother-in-law was harassing her. There was physical and mental cruelty to her from her mother-in-law before few days of the incident. There were exchange of words between the deceased and her mother-in-law and due to that, she poured kerosene on herself and put fire. After receiving the complaint, P.I., Prantij Police Station registered the offence under Sec.498-A of IPC against the present respondent-accused and started the investigation. As the deceased died during treatment, Sec.306 of IPC was added. After completing the investigation, Police submitted the charge-sheet against the accused and learned Sessions Judge committed the case to the Sessions Court which was numbered as Sessions Case No.128 of 1995 and transferred to Addl. Sessions Judge, Sabarkanta, Himmatnagar for trial. Learned Addl.Sessions Judge framed the charge against the respondent-accused. The accused pleaded innocence and requested to be tried.

3. To prove the charge against the accused, the prosecution has produced the documentary evidence and also led the oral evidence. Further statements of the accused were also recorded. After hearing the learned advocates of the respective parties, learned Addl. Sessions Judge has acquitted the accused against which, the present appeal is preferred.

4. Learned Addl. Public Prosecutor has mainly argued that the learned Trial Judge has failed to appreciate that there was a mental cruelty to the deceased from her mother-in-law as a consequence of which, she has committed suicide. He has also argued that learned trial Judge has not properly appreciated the evidence of the complainant, who is the brother of the deceased and mother of the deceased.

5. This Court has carefully gone through the record and proceedings which was called for and also have gone through the evidence which was suggested to be read by the learned Addl. Public Prosecutor. It is to be noted that the complainant and witness are the brother and mother of the deceased. It is established from the record that the Vinabha was taken immediately to the

hospital at Himmatnagar where she was admitted an indoor patient and on the same day, brother and mother of the deceased reached there. The deceased succumbed to her injuries on 8-4-1992 and on the same day, post-mortem was performed. It was admitted by the complainant and mother of the deceased in their oral evidence that when they reached the hospital, deceased was fully conscious and was able to speak. Still, the complaint was not filed for a considerable period and for the late complaint, no satisfactory explanation has been putforth by the prosecution. It is to be noted that after the deceased was admitted in the hospital, her dying declaration was recorded by the Executive Magistrate wherein she has categorically stated that she has received the injuries as a result of accident and she has not stated anything regarding the cruelty alleged to have been committed by her mother-in-law. The deceased has stated the above facts before the Police also who has recorded her statement at the earliest point of time.

6. So, there is no evidence against the respondent-accused involving her with the alleged crime directly or indirectly. The prosecution was not able to prove that the deceased committed suicide as a result of physical and mental cruelty committed by the respondent-accused. It is revealed that the marriage life of the deceased was of more than eight years. Therefore, prosecution will not get the benefit of sec.113-A of the Indian Evidence Act also.

7. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

".... This court has observed in *Girija Nandini Devi V. Bigendra Nandini Chaudry* (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

8. The appeal stands rejected.

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