

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 193 of 2001

For Approval and Signature:

THE HON'BLE MR.JUSTICE J.M.PANCHAL

AND HON'BLE MR.JUSTICE H.B. ANTANI

- =====
- 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 ?

=====

RANJISINHGH BHEMABHAI DABHI - Appellant
Versus
STATE OF GUJARAT - Respondent

=====

Appearance :

MR GM AMIN for Appellant.

MR KT DAVE, APP for Respondent.

=====

CORAM :THE HON'BLE MR.JUSTICE J.M.PANCHAL
AND HON'BLE MR.JUSTICE H.B. ANTANI

Date : 30/06/2005

ORAL JUDGMENT

(Per : THE HON'BLE MR.JUSTICE J.M.PANCHAL)

Instant appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973 is directed against judgment dated February 22, 2001, rendered by the learned 2nd

Additional Sessions Judge, Kheda at Nadiad, in Sessions Case No.65 of 2000, by which the appellant is convicted under Sections 498-A and 306 read with Section 114 of the Indian Penal Code and sentenced to S.I. for three years and fine of Rs. 500/-, in default, S.I. for one month for commission of offence punishable under Section 498-A I.P.C. as well as S.I. for ten years and fine of Rs.500/-, in default, S.I. for one month for commission of offence punishable under Section 306 read with Section 114 I.P.C.

2. The facts emerging from the record of the case are as under :

Complainant Ishwarbhai Jugabhai Chauhan is resident of village Sudhavansol, Taluka : Mehmdavad, District : Kheda. He has two sons and two daughters. The name of eldest daughter is Kokilaben whereas the name of younger to Kokilaben was Kailasben. Kailasben was married to the appellant, who is resident of village Vamali, Taluka : Mehmdavad, District : Kheda. Kokilaben is married to Ajitbhai, who is younger brother of the appellant. During subsistence of marriage with the appellant, Kailasben gave birth to two sons. The earlier period of marriage life of deceased Kailasben with the appellant was happy. However, it is the case of prosecution that the appellant developed

illicit relations with one Jashiben, daughter of Bababhai Amarabhai, who was staying in neighbourhood of the appellant. It may be stated that the appellant with his wife Kailasben was staying separately in a house situated in village Vamali and he had also another house situated in the field. After development of illicit relations with Jashiben, the appellant was not coming to his house situated in the village and was residing in the house situated in the field. Deceased Kailasben used to persuade the appellant to discontinue his relations with Jashiben. This was not liked by the appellant. The appellant, therefore, started meting out physical and mental cruelty to deceased Kailasben. Deceased Kailasben used to narrate ill-treatment meted out to her by the appellant, to her mother, sister, brother etc., when she used to visit her parental house. The incident in question took place on August 27, 1999. On the date of the incident, deceased went to the field where the appellant was also present. After doing work in the field, the deceased was to return to her house situated in the village. At that time, she requested the appellant to return to his house situated in the village. However, the appellant flatly refused to do so. This willful conduct on the part of the appellant caused grave mental injury to deceased Kailasben and drove her to commit suicide. After returning home, deceased Kailasben poured kerosene over her body and

set herself on fire. Because of pain resulting from burn injuries received by her, she raised shouts. Therefore, a neighbour removed her to Municipal Hospital, Mehmdavad for treatment. The Doctor on duty gave information to the police. Thereupon police officer from Mehmdavad Police Station came to the hospital and recorded her statement. An arrangement was also made for recording dying declaration of injured Kailasben and accordingly, her declaration was recorded by Mr.D.R.Prajapati, who was then discharging duties as Executive Magistrate, Mehmdavad. However, the Medical Officer of Mehmdavad hospital found that condition of Kailasben was deteriorating. He, therefore, advised persons accompanying her to remove her to Civil Hospital, Nadiad for better treatment. However, she was admitted into Urvis Hospital, Nadiad run by Dr. V.I.Shah on August 28, 1999. Dr.Shah also informed Nadiad Police Station, as a result of which police officer from Nadiad Town Police Station visited the hospital and recorded statement of injured Kailasben. The police officer in charge of Nadiad Police Station also made necessary arrangement for recording dying declaration of the injured, which was recorded by Mr.S.H.Vyas, who was then Executive Magistrate, Nadiad. It may be stated that parents and other relatives of injured Kailasben were informed that she had received burn injuries and was admitted in Nadiad hospital and, therefore, parents

and other relatives of the deceased also visited the deceased when she was being treated at Urvis Hospital, Nadiad. During the course of treatment, deceased Kailasben succumbed to her injuries on September 1, 1999. As the deceased was subjected to physical and mental cruelty by the appellant, Ishwarbhai Jugabhai Chauhan, who is father of the deceased, lodged his complaint with Police Sub Inspector, Mehmdavad Police Station. The investigating officer made arrangement for sending dead body of the deceased to Civil Hospital, Nadiad, for autopsy. He also recorded statements of those persons who were found to be conversant with the facts of the case.

3. On completion of investigation, the appellant was chargesheeted in the Court of learned Judicial Magistrate, First Class, Mehmdavad for commission of offences punishable under Sections 498-A and 306 read with Section 114 of the Indian Penal Code. As the offence punishable under Section 306 IPC is exclusively triable by a Court of Sessions, the case was committed to Sessions Court, Kheda, for trial, where it was numbered as Sessions Case No. 65 of 2000.

4. The learned 2nd Additional Sessions Judge, Kheda at Nadiad to whom the case was made over for trial, framed necessary charge against the appellant at Exh.4. It was read

over and explained to him. He pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined (1) Ishwarbhai Jugabhai Chauhan as P.W.-1 at Exh.7; (2) Sureshbhai Laxmidas Patel as P.W.-2 at Exh.9; (3) Executive Magistrate Dahyabhai Ranchhodbhai Prajapati as P.W.-3 at Exh.16; (4) Dr.Naishad Bhanubhai Bhatt as P.W.-4 at Exh.19; (5) Ajitbhai Ishwarbhai Chauhan as P.W.-5 at Exh.24; (6) Juvansinh Udesinh Chauhan as P.W.-6 at Exh.25; (7) Dr.Jigeshbhai Kacharalal Parmar as P.W.-7 at Exh.26; (8) Dr.Vipul Indulal Shah as P.W.-8 at Exh.31; (9) Executive Magistrate Sunilbhai Harnarayanbhai Vyas as P.W.-9 at Exh.40; (10) Kokilaben Ishwarbhai as P.W.-10 at Exh.43; (11) Jitubhai Ishwarbhai Chauhan as P.W.-11 at Exh.44; (12) Shakaraji Somaji as P.W.-12 at Exh.45; (13) Chandaji Devaji as P.W.-13 at Exh.47; (14) Ramsinh Fulsinh Dabhi as P.W.-14 at Exh.48; and, (15) Himatsinh Bhimsinh Chavda as P.W.-15 at Exh.55, to prove its case against the appellant. The prosecution also produced documentary evidence such as complaint lodged by Ishwarbhai at Exh.8; inquest report of the deceased at Exh.15; dying declaration of the deceased recorded by Executive Magistrate Mr.Prajapati at Exh.18; certificate of injury sustained by deceased Kailasben and issued by Dr.Naishad Bhatt at Exh.20; postmortem notes of deceased prepared by Dr.Parmar at Exh.29; certificate of injuries sustained by deceased Kailasben and issued by

Dr.Vipul Shah at Exh.39; declaration of the deceased recorded by Executive Magistrate Mr.Vyas at Exh.42; panchnama of place of incident at Exh.49; report of FSL at Exh.52; statement of Kailasben recorded by ASI Mr.Chandaji of Mehmdavad Police Station at Exh.54; statement of Kailasben recorded by Head Constable of Nadiad Taluka Police Station at Exh.56, etc. in support of its case against the appellant.

5. After recording of evidence of prosecution witnesses was over, the learned Judge explained to the appellant the circumstances appearing against him in the evidence of the prosecution witnesses, and recorded his further statement as required by Section 313 of the Code of Criminal procedure, 1973. In his further statement, case of the appellant was that a false case was lodged against him and that he was innocent. However, no defence evidence was adduced by him.

6. On appreciation of evidence led by the prosecution, the learned Judge held that the appellant had illicit relations with Jashiben and as the deceased was persuading him to discontinue the said relationship, the appellant had subjected the deceased to physical and mental cruelty. According to the learned Judge, the acts of the appellant

in not returning to his house in which the deceased was staying and in maintaining illicit relations with Jashiben as well as subjecting the deceased to physical and mental cruelty because she was objecting to illicit relationship were sufficient to cause grave mental injury to the deceased, as a result of which, she was driven to commit suicide. In view of abovereferredto conclusions, the learned Judge has convicted the appellant for the offences punishable under Sections 498-A and 306 read with Section 114 IPC, and imposed sentences referred to earlier, vide judgment dated February 22, 2001, giving rise to instant appeal.

7. Mr.G.M.Amin, learned counsel of the appellant, contended that the evidence led by the prosecution to establish physical and mental cruelty meted out to deceased Kailasben by the appellant is not sufficient to sustain conviction of the appellant under Section 498-A IPC and, therefore, the same is liable to be set aside. It was argued that neither the evidence of complainant Ishwarbhai nor that of Kolilaben, who is elder sister of deceased Kailasben nor that of Jitubhai Ishwarbhai, who is brother of the deceased satisfactorily establishes that the appellant had any illicit relations with Jashiben, daughter of Bababhai Amarabhai, or the fact that the appellant had subjected the

deceased to cruelty as contemplated by Section 498-A IPC and, therefore, the impugned judgment deserves to be reversed. It was emphasised that evidence of Executive Magistrate Mr.Vyas read with the contents of dying declaration made by the deceased and produced by him at Exh.42, would indicate that the deceased had sustained burn injuries accidentally when she was preparing loaves and as the prosecution has led two sets of evidence, each one of which contradicts other, conviction of the appellant under Sections 498-A and 306 read with Section 114 IPC should be set aside. In the alternative, it was argued that refusal by the appellant to return to his house because of so-called illicit relations of the appellant with Jashiben cannot be treated as an act which would cause serious mental injury to the deceased, sufficient to drive the deceased to commit suicide and, therefore, also the impugned judgment should be set aside. The learned counsel of the appellant asserted that the evidence on record is not appreciated by the learned Judge of the trial Court in its true perspective and, therefore, the appeal should be allowed.

8. Mr.K.T.Dave, learned A.P.P. for the State, pleaded that evidence of the father of the deceased read with that of sister and brother of the deceased makes it very clear that the appellant had illicit relations with Jashiben, as a

result of which he was subjecting the deceased to physical and mental cruelty, and as the appellant had refused to return to his house situated in the village, the deceased was left with no alternative, but to commit suicide and, therefore, conviction of the appellant under Section 498-A and section 306 read with section 114 IPC cannot be regarded as erroneous. It was contended that reliable evidence of the father of the deceased establishes that the act of the appellant was such which had caused serious mental injury to the deceased, as a result of which the deceased was driven to commit suicide and, therefore, conviction of the appellant under Section 306 read with Section 114 IPC should be upheld by this Court. What was maintained by the learned A.P.P. for the State was that it is wrong to contend that two sets of evidence, which contradict each other, have been led by the prosecution before the Court and, therefore, the appellant is not entitled to any benefit on the ground that contradictory evidence is led by the prosecution to prove the charge. The learned counsel of the State Government vehemently argued that where a husband maintains illicit relations with another woman and refuses to return to his house where his legally wedded wife is residing, after subjecting her to physical and mental cruelty, such an act must be regarded by the Court as an act causing serious mental injury to the wife and sufficient to drive her to

commit suicide and, therefore, the plea that no offence under section 498-A is made out, or that the appellant is not guilty of offence under section 306 read with section 114 IPC raised on behalf of the appellant, should not be accepted by the Court. It was pointed out to the Court that the learned Judge of the trial Court has recorded cogent and convincing reasons for convicting the appellant under Sections 498-A and 306 read with section 114 IPC, and as the learned counsel of the appellant has failed to dislodge them, the appeal, which lacks merits, should be dismissed.

9. This Court has undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case.

10. On scrutiny of evidence adduced by the prosecution, this Court finds that witness Ishwarbhai Jugabhai Chauhan, who is father of the deceased, has maintained before the Court that the appellant was having illicit relations with another woman named Jashiben and as the deceased was persuading him to discontinue the said relationship, she was subjected to physical and mental cruelty by the appellant. Though this witness has been cross-examined at length and in detail, nothing could be brought on record to impeach his

credibility. It is well to remember that he is father of the deceased. The evidence on record establishes that the deceased used to visit her parental house on different occasions. Naturally, therefore, the deceased would tell her woes to her parents and other close relatives. Under the circumstances, the assertions made by this witness that the deceased was subjected to physical and mental cruelty by the appellant because he had illicit relations with another woman, deserves acceptance. The mental and physical cruelty meted out by the appellant to the deceased is also narrated in detail by witness Kokilaben Ishwarbhai examined at Exh.43, who is sister of the deceased as well as by Jitubhai Chauhan examined at Exh.44, who is brother of the deceased. On reappraisal of evidence on record, this Court finds that no error is committed by the learned Judge of the trial Court, who had advantage of observing demeanour of the witnesses, in recording finding that commission of offence punishable under section 498-A IPC is established by the prosecution.

11. However, the testimony of Executive Magistrate Mr.Sunilbhai H.Vyas, recorded at Exh.40, would indicate that at about 10.20 P.M. on August 27, 1999 he had received yadi from Mehmdavad Police Station to record dying declaration of

deceased Kailasben, who was admitted in Municipal Hospital, Mehmdavad. The testimony of Mr.Vyas further shows that on receipt of yadi, he had visited the hospital and after ascertaining that the deceased was conscious and in a fit state of mind to make statement, had recorded statement of the deceased. The Executive Magistrate has in no uncertain terms mentioned before the Court that it was stated by the deceased that she was not subjected to any cruelty by any one and that she had received burn injuries accidentally when she was preparing loaves. Mr.Vyas has produced dying declaration made by the deceased and recorded by him at Exh.42. A bare perusal of the same makes it evident that in answer to Question No.11 it was stated by the deceased that she had received burn injuries accidentally when she was preparing loaves and that she was not subjected to any cruelty by any one. It is well to remember that Mr.S.H.Vyas is a prosecution witness and not a defence witness. The prosecution also wants the Court to rely upon the testimony of Executive Magistrate Mr.Vyas as well as declaration produced by him on the record of the case at Exh.42. Though it was asserted by Mr.Vyas in his examination-in-chief that the deceased had stated before him that she had received burn injuries accidentally while preparing loaves, no questions were put to him indicating that he had recorded a wrong statement or that the deceased had committed suicide.

Thus, by leading evidence of (1) Ishwarbhai Jugabhai Chauhan examined at Exh.7, (2) Executive Magistrate Mr.D.R.Prajapati examined at Exh.16, (3) declaration of the deceased recorded by Executive Magistrate Mr.Prajapati and produced at Exh.18, (4) Kokilaben examined at Exh.43, and (5) Jitubhai Ishwarbhai examined at Exh.44, the prosecution wants the Court to believe its case that the appellant had illicit relations with a woman named Jashiben and, therefore, was subjecting the deceased to physical and mental cruelty, as a result of which the deceased committed suicide, whereas by leading evidence of Executive Magistrate Mr.S.H.Vyas recorded at Exh.40 and statement recorded by him, which is produced at Exh.42, the prosecution wants to point out to the Court that the deceased had died accidentally while preparing loaves. Thus, there is no manner of doubt that two sets of evidence, each one of which contradicts the other, are led by the prosecution. In a case where prosecution leads two sets of evidence, each one of which contradicts the other, it is difficult to found conviction of the accused. This principle has been highlighted by the Supreme Court in **Harchand Singh and another v. State of Haryana, AIR 1974 SC 344**. In the said case, two accused were arraigned in the assault on the deceased, as a result of which the latter had died. The prosecution, in support of its case, examined two sets of eye-witnesses. The evidence of one set consisted

of the testimony of three eye-witnesses, who were not present at the time of the occurrence according to the fourth eye-witness who according to the prosecution case was with the deceased at the time of the assault. This fourth eye-witness was also shown to be an unreliable witness by the other evidence produced by the prosecution. Under the circumstances, the Supreme Court held that it was a case wherein one set of evidence condemned the other set leaving the Court with no reliable and trustworthy evidence upon which the conviction of the accused might be based.

Applying the principle laid down by the Supreme Court in above quoted decision to the facts of instant case, this Court finds that two sets of evidence led by the prosecution contradict each other and, therefore, the appellant will have to be given benefit of reasonable doubt arising from the facts of the case. It is made clear that the submission advanced by Mr.G.M.Amin, learned counsel of the appellant, that the conduct of the appellant in maintaining illicit relations with Jashiben was not an act sufficient to cause serious mental injury to the deceased and could not have driven the deceased to commit suicide, is specifically negatived. However, on the facts and in the circumstances of the case, a reasonable doubt arises about the complicity of the appellant because of contradictory

evidence led by the prosecution and it is held that the appellant is entitled to the same. Therefore, impugned judgment will have to be set aside.

For the foregoing reasons, the appeal succeeds. Judgment dated February 22, 2001 rendered by the learned 2nd Additional Sessions Judge, Kheda at Nadiad in Sessions Case No. 65 of 2000 convicting the appellant under sections 498-A & 306 read with Section 114 I.P.C. and sentencing him to suffer S.I. for three years and fine of Rs. 500/-, in default, S.I. for one month for commission of offence punishable under section 498-A IPC as well as S.I. for ten years and fine of Rs.500/-, in default, S.I. for one month for commission of offence punishable under Section 306 r.w. section 114 IPC, is hereby set aside. Instead, the appellant is acquitted. The respondent is directed to set at liberty the appellant forthwith, unless his presence is needed with reference to any other case. Fine , if paid, be refunded to the appellant. Muddamal to be disposed of in terms of directions given by the learned Judge in the impugned judgment.

[J.M.PANCHAL, J.]

(H.B.ANTANI, J.]

(patel)