

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL NO. 207 of 1997

FOR APPROVAL AND SIGNATURE:

HONOURABLE SMT. JUSTICE ABHILASHA KUMARI

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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 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 ?
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STATE OF GUJARAT....Appellant(s)

Versus

DAHAYALAL JAMNADAS SHAH & 1....Opponent(s)/Respondent(s)

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Appearance:

MR KL PANDYA, ADDL. PUBLIC PROSECUTOR for the Appellant(s) No. 1

ABATED for the Opponent(s)/Respondent(s) No. 1

MR MAHENDRA K PATEL, ADVOCATE for Opponent/Respondent(s) No. 2

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CORAM: **HONOURABLE SMT. JUSTICE ABHILASHA KUMARI**

Date : 31/07/2013

ORAL JUDGMENT

1. The instant appeal is directed against the judgment and order dated 30.11.1996, passed by the learned Assistant Sessions Judge, Sabarkantha in Sessions Case No.69/1996, whereby the accused persons

have been acquitted of charges under Sections-354, 498A and 306 read with Section-114 of the Indian Penal Code ("IPC", for short).

2. It may be noted that respondent No.1 Dahyalal Jamnadas Shah, father-in-law of deceased Kalpanaben (hereinafter referred to as "the deceased"), has passed away. The appeal qua accused No.1, therefore, stands abated. The appeal now survives only in respect of respondent No.2-Virendrakumar Dahyalal Shah, husband of the deceased.

3. It is further clarified that the charge under Section-354 of IPC was framed against accused No.1 only. Insofar as respondent No.2, husband of the deceased is concerned, he has been charged with the commission of offences under Sections-306 and 498A of the IPC.

4. Briefly stated, the case of the prosecution is that the deceased was married to respondent No.2 about one-and-a-half years before the incident which took place on 14.04.1996, as per the customs and rites prevalent in their community. After the marriage, the deceased lived at Talod with her mother-in-law,

father-in-law and sister-in-law. It is the case of the prosecution that accused No.1 (father-in-law of the deceased) had bad intentions towards the deceased and used to molest her by putting his hand on her breast and asking her to serve him food. The deceased complained about this behavior of accused No.1 to her husband, accused No.2, who did not believe her. On the contrary, accused No.2 told her that she was defaming his father. This led to quarrels in the house and the deceased was subjected to mental torture. Under the circumstances, the deceased poured kerosene upon herself and set herself ablaze at about 19.30 hours, on 14.04.1996. The complaint (Exhibit-13) to this effect was registered at Talod Police Station on 04.05.1996, vide C.R.No.I-63/1996, by Dilipkumar Jayantilal Gandhi, the cousin brother of the deceased.

5. Upon registration of the complaint, the investigating machinery swung into motion. Statements of witnesses were recorded and, as sufficient incriminating evidence was found against the accused, they were chargesheeted before the Court of the learned Judicial Magistrate, First Class, Prantij. The chargesheet was read over and explained to the

accused, who denied their guilt and claimed to be tried. As the offence under Section-306 of IPC is exclusively triable by the Court of Sessions, the learned Magistrate committed it to the Court that has rendered the impugned judgment and order (hereinafter referred to as "the Trial Court"). After the recording of the evidence of the prosecution witnesses was over, the allegations against the accused were put to them. In their statements recorded under Section-313 of the Criminal Procedure Code, 1973, the accused denied their guilt.

6. In support of its case, the prosecution examined as many as 14 witnesses and produced documentary evidence. After appreciating the evidence on record, the Trial Court acquitted both accused persons of the offences with which they were charged *vide* the impugned judgment and order. Aggrieved thereby, the State is in appeal.

7. As indicated earlier, this Court proposes to deal with the evidence adduced by the prosecution witnesses from the perspective of the charges under Sections-498A and 306 of IPC levelled against respondent No.2

only, as accused No.1 has already died. It may further be noticed that respondent No.1 was the main accused person against whom most of the charges were levelled. With this clarification, it would be appropriate to briefly discuss the salient features of the oral and documentary evidence adduced by the prosecution.

8. PW-1, Dilipkumar Jayantilal Gandhi is the complainant, whose deposition is to be found at Exhibit-12. He states that the deceased was married to respondent No.2 about two years before the incident. After the marriage, she went to live with her in-laws at Talod. He further states that whenever the deceased came to his house, she told his wife Shrutiben, that respondent No.1 has bad intentions regarding her and used to describe the manner in which respondent No.1 tried to molest her. This witness further states that when he went to Ahmedabad, he informed the other relatives of the deceased regarding the disclosures made by the deceased. This witness states that accused No.2, the husband of the deceased was called by him and apprised of the behavior of accused No.1. Thereafter, the deceased, who had also come to Ahmedabad, was sent back to her matrimonial house,

with accused No.2. After about seven to eight days, this witness heard the news that the deceased had died. This witness went to the Hospital, accompanied by his wife. The Hospital authorities did not permit him to see the body of the deceased, on that day. On the next day, when this witness went to the Hospital, he was shown the body of the deceased. He noticed that her tongue and eyes were both protruding out. This witness states that upon seeing the body, he fainted. Thereafter, the body was taken for postmortem and cremated, as per the Hindu religious rites.

In cross-examination, this witness states that the parents of the deceased are living in Maharashtra. Upon being informed of the death of their daughter, they came to the Hospital.

9. PW-2, Ketankumar Navinchandra Shah, is one of the Panch witnesses of the Panchanama of the scene of offence, at Exhibit-15. This witness states that on 14.04.1996, the Talod Police told him to act as a Panch witness. He states that he went to the spot where the incident had occurred. There was a gas-pipe, but the regulator was not working. The Panchnama was

recorded in the kitchen. A vessel containing milk was placed on the burner of the stove. There were other kitchen articles there, as well, which were taken into custody.

10. The Panchanama of the scene of the offence is at Exhibit-15. In the said Panchanama, it is mentioned that the kitchen where the incident took place is a "standing kitchen". The platform is about 3½ feet high. On the platform, there was a brass primus next to which there was a single gas-stove on which there was a covered vessel containing warm milk. It is clearly mentioned in the said Panchanama that the gas-stove was connected to a pipe which had recently got burnt. The other end of the pipe was connected to a cupboard below the platform. It is further mentioned in the Panchnama that the room was smelling of kerosene.

11. Exhibit-16 is the Inquest Panchnama. It is stated therein that the body of the deceased was severely burnt from head to toe. On examining the body, the Panch witnesses could not find any marks of beatings or physical torture upon it.

12. PW-3, Natvarlal Harjivandas Gandhi, has been

examined at Exhibit-21. He is an uncle of the deceased. This witness states that the deceased had visited his house at Ahmedabad, 15 days before the incident. She had been dropped there by Kirit (PW-10), a friend of her husband, accused No.2. PW-10 is stated to have told this witness that the deceased had come there as she was annoyed. The deceased is further stated to have told the other members of the family regarding the ill-intentions that accused No.1 had towards her and the manner in which she was molested by him. This witness further states that accused No.2 was summoned and advised to stay separately from accused No.1. However, accused No.2 said that he did not earn enough to stay separately. The deceased was, thereafter, sent back to the matrimonial home with accused No.2. This witness further states that after about 15 days, on 14.04.1996 at about 9.00 p.m., they received telephonic information from a person named Dilip, that the deceased had died due to the bursting of a gas cylinder. This witness states that he went to see the deceased in Hospital but was not permitted to do so. The next morning, this witness was shown the body of the deceased. He suspected that the deceased

had been done to death.

In cross-examination, this witness states that accused No.2 had also got burnt while saving the deceased and when this witness had gone to see him in Hospital, accused No.2 was unconscious. Further, in cross-examination this witness denies that the deceased died an accidental death. He has resiled from the statement to this effect given by him to the Police.

13. PW-4, Mahendrakumar Natvarlal Gandhi, is a cousin brother of the deceased, whose deposition is to be found at Exhibit-22. This witness repeats the story of the prosecution regarding the ill-intentions of accused No.1 towards the deceased and the incidents of his misbehavior towards her. According to this witness, the deceased had come to his house about 10 to 12 days before the incident with a friend of accused No.2, and had stayed the night. She had told him regarding the molestation by accused No.1, the next morning. This witness further introduces a new twist to the story by stating that the deceased also told him that her mother-in-law inflicted mental

torture upon her by saying that she was "barren" and the accused made demands for money, to be brought by her from her parents.

14. PW-5, Vinodchandra Harjivandas Gandhi, is the father of the deceased. He has been examined at Exhibit-24. This witness states that he received a telephone call on the night of 14.04.1996, informing him that he should come to Ahmedabad immediately, as his daughter, Kalpana, was seriously ill. He states that about 15 days prior to the incident, he had met the deceased at Ahmedabad where she had informed him that she was facing mental torture from accused No.1 and did not want to go back to her matrimonial home. After a week, accused No.2 came to take the deceased back and she was sent back with him. This witness further states that after her death, the ornaments given by him to the deceased were taken back by him.

In cross-examination, this witness states that he went to Talod after receiving the news of the incident and his mental condition was not good. He states that even at the time of deposition, he is not in a proper mental frame, therefore, he could not file the

complaint and it has been filed by PW-1. He further states that the ornaments of the deceased were handed over to him by accused No.1, without any hesitation.

15. PW-6, Savitaben Natvarlal Gandhi, is an aunt of the deceased. She has deposed at Exhibit-25. This witness reiterates the case of the prosecution regarding molestation of the deceased by accused No.1. She further states that the deceased had told her regarding this and further, that accused No.1 had threatened that she should not disclose it to anyone. This witness further deposes that on the morning after the incident, when she saw the body of the deceased, she found that her tongue was protruding out; therefore, she got suspicious that the deceased has been murdered. This witness states that other persons were talking that the deceased was murdered.

In cross-examination, this witness states that upon seeing the deceased, she became unconscious. This witness has resiled from her statement made before the Police, to the effect that the deceased had suffered burns accidentally, while heating milk and it was accused No.2 who had saved her, and that they had no

suspicion towards anybody.

16. PW-7, Hansaben Mahendrakumar Gandhi, is the sister-in-law (Bhabhi) of the deceased. The deposition of this witness is almost a repetition of the depositions of the other related prosecution witnesses, regarding the ill-intentions of accused No.1 towards the deceased. It does not merit any further discussion, in detail.

17. PW-8 is Dr.Anjali Omprakash Gohel, who has been examined at Exhibit-27. This witness has performed the postmortem on the body of the deceased. She states that the deceased had sustained 100% burns of the first, second and third degree, on her entire body. The preliminary cause of death, as stated by this witness, is 'death due to burns'. This witness states that the final cause of death would be declared after receiving the Report of the Forensic Science Laboratory which, according to this witness, had not been received till the date of her deposition. This witness further states that a separate Certificate regarding the cause of death has been given, wherein the cause of death is stated to be 'shock due to

burns'. However, it is stated that the final cause of death would be given after a Chemical Analysis Report of the viscera is received from the Forensic Science Laboratory. This witness further states that accused No.2, husband of the deceased, was also brought to the Hospital along with the deceased with second degree burn injuries on his hands, face and neck. This witness states that the burn injuries suffered by accused No.2 could have been caused while trying to save the deceased. This witness states that the clothes of accused No.2 were not smelling of kerosene.

18. The Postmortem Report is at Exhibit-28. In Column-17 thereof, it is clearly stated that no signs of any injury or strangulation mark are visible on the body of the deceased.

19. PW-9 is Shrutiben Dilipkumar Gandhi, wife of the complainant, who has been examined at Exhibit-31. This witness repeats the same allegations as have the other prosecution witnesses, regarding the ill-intentions of accused No.1 towards the deceased and the manner in which he misbehaved with her and threatened her not to disclose it to anybody.

20. PW-10 is Kiritkumar Mansukhlal Sheth. His deposition is at Exhibit-32. He is a friend of accused No.2, who is stated to have brought the deceased to Ahmedabad. This witness has turned hostile and has not supported the case of the prosecution. He has been declared hostile.

21. PW-11, Ramjibhai Kanjibhai Damor, has been examined at Exhibit-33. He was serving as a Head Constable at Talod Police Station, at the relevant point of time. He has made a report in the Station Diary regarding the information received by him from accused No.1, to the effect that the deceased had got burnt.

22. PW-12 is Shardaben Prabhudas Nai. She is a neighbour of the deceased and her testimony is at Exhibit-35. This witness states that the deceased lived in her neighbourhood at Talod. On 14.04.1996, she had gone to wash utensils and returned after 8.00 p.m. This witness states that she saw a crowd had gathered outside the house of accused No.2 and learnt that the deceased had got burnt. This witness states

that she got the impression that it was an accident, as the deceased had milk to heat on the gas-stove and had got burnt accidentally. She states that accused No.2 tried to save the deceased and he also got burnt in the process. This witness states that the deceased had good relations with her in-laws.

23. PW-13 is Amuji Bhavanji Chavda, who was serving as a PSI at the relevant point of time. He is the first Investigating Officer of the case. He states that accused No.1 had given information to the effect that it is an accidental death.

In cross-examination, this witness categorically states that all the relatives of the deceased whose statements he had recorded have stated, that the deceased died an accidental death and none of them has made any complaint regarding torture and harassment to the deceased from her in-laws. This witness refers to the statement made by Savitaben, recorded by him, wherein she has stated that the deceased did not face any torture or harassment from her in-laws and lived in harmony with accused No.2.

24. The last prosecution witness to be examined is

PW-14, Jagdishbhai Devlabhai Katara. He is the second Investigating Officer of the case and his deposition is to be found at Exhibit-38. This witness describes the procedure undertaken by him after entering upon the investigation. He also refers to the statement of PW-10, Kiritkumar Mansukhlal Sheth, as recorded by him, to the effect that he had accompanied the deceased to Ahmedabad in a State Transport Bus and dropped her at the flat of her, uncle PW-3.

25. The above, in totality, is the oral and documentary evidence adduced by the prosecution.

26. The charges faced by accused No.2, husband of the accused, are regarding cruelty within the meaning of Section-498A and abetment of the suicide of the deceased under Section-306 of IPC. The Trial Court has delivered a lengthy judgment, in which there is an extensive discussion of the evidence of the prosecution witnesses and the allegations made by them. It is clear from the evidence on record that the main accused person was accused No.1. All the prosecution witnesses have deposed against accused No.1, father-in-law of the deceased. Insofar as the

Trial Court is concerned, its focus has also remained on the allegations against accused No.1 which, according to the Trial Court, could not be proved by the prosecution beyond reasonable doubt. As, in the present appeal, this Court is not concerned with accused No.1, who has already died, the oral and documentary evidence would be re-appreciated, keeping in mind the charge against accused No.2 only.

27. A thorough scrutiny of the evidence of the prosecution witnesses, as discussed hereinabove, clearly reveals that no allegations of cruelty or abetment have been levelled by any of the prosecution witnesses, against accused No.2. In fact, there is not even an iota of evidence from any witness against accused No.2. Though PW-4 has made general allegations that the in-laws of the deceased tortured her to bring money from her parental house. However, it has not been specified by the said witness which of the in-laws made this demand. This witness also alleged that the mother-in-law of the deceased used to torture her by calling her 'barren'. However, the mother-in-law of the deceased is not an accused in the present case.

Considering the entire evidence from all possible angles, this Court does not find even a single allegation against accused No.2, regarding cruelty or abetment of suicide. All the allegations levelled by the prosecution witnesses are against accused No.1.

28. As a result of the above discussion, this Court finds itself in agreement with the finding of acquittal recorded by the Trial Court, in favour of accused No.2.

29. For the aforestated reasons, there is no merit in the appeal, which deserves to be dismissed.

30. It is, accordingly, dismissed.

(SMT. ABHILASHA KUMARI, J.)

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