

KAMLESH PRABHUDAS TANNA & ANOTHER

v.

STATE OF GUJARAT

(Criminal Appeal No. 1517 of 2007)

AUGUST 26, 2013

[K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]

CODE OF CRIMINAL PROCEDURE, 1973:

Appeal - High Court affirming the conviction - Held: It is the sacrosanct duty of appellate court, while sitting in appeal against judgment of trial court, to be satisfied that the guilt of accused has been established beyond all reasonable doubt -- Appreciation of evidence and proper re-assessment to arrive at the conclusion is imperative in a criminal appeal - In the instant case, High Court, while dealing with the statutory appeal has failed to appreciate and scrutinize the evidence in proper perspective, and the reasons ascribed by it for accepting the evidence and concurring with the view of the trial court is not supported by any acceptable reason -- There is total lack of deliberation and proper ratiocination - Judgment of High Court set aside and matter remitted to it for disposal of the appeal afresh.

The marriage between appellant-accused No. 1 (A-1) and the sister of the informant (PW-2) was solemnized on 24.9.1997. Two children, one son and a daughter were born to the couple. On 11.9.2001, A-1 informed PW-2 telephonically that his sister had committed suicide. PW-2 lodged an FIR alleging that after the marriage of his sister, A-1 and his mother had been constantly asking for dowry of Rs.2 lacs, but as the said demand could not be satisfied they started ill-treating her in the matrimonial home because of which she was compelled to commit suicide.

A The trial court convicted the accused of the charges and sentenced them on all counts including 8 years RI u/s. 304-B IPC. The High Court affirmed the conviction and the sentence.

B Disposing of the appeal, the Court

HELD: 1.1 It is the sacrosanct duty of the appellate court, while sitting in appeal against the judgment of the trial court, to be satisfied that the guilt of the accused has been established beyond all reasonable doubt after proper re-assessment, re-appreciation and re-scrutiny of the material on record. Appreciation of evidence and proper re-assessment to arrive at the conclusion is imperative in a criminal appeal. That is the quality of exercise which is expected of the appellate court to be undertaken and when that is not done, the cause of justice is not subserved, for neither an innocent person should be sent to prison without his fault nor a guilty person should be let off despite evidence on record to assure his guilt. [Para 12-13] [265-C-F]

E 1.2 In the instant case, the High Court, while dealing with the statutory appeal under the Code of Criminal Procedure, has failed to appreciate and scrutinize the evidence in proper perspective, and the reasons ascribed by it for accepting the evidence and concurring with the view of the trial court is not supported by any acceptable reason. There is total lack of deliberation and proper ratiocination. There has been no assessment of evidence on record. The credibility of the witnesses has not appositely been adjudged. Affirmative satisfaction recorded by the High Court is far from being satisfactory. The trial judge has written an extremely confused judgment replete with repetitions and in such a situation it becomes absolutely obligatory on the part of the High Court to be more careful to come to a definite conclusion about the guilt of the accused persons, for their liberty

is jeopardized. Consequently, the judgment and order passed by the High Court is set aside and the matter is remitted to the High Court to dispose of the appeal afresh as expeditiously as possible. [Para 7, 12 and 14] [263-A-B; 265-A-C, F-G] A

Padam Singh v. State of U.P. 1999 (5) Suppl. SCR 59 = (2000) 1 SCC 621; *Rama and others v. State of Rajasthan* (2002) 4 SCC 571; *Iqbal Abdul Samiya Malek v. State of Gujarat* 2012 SCR 1012 = (2012) 11 SCC 312; *Bani Singh v. State of U.P.* 1996 (3) Suppl. SCR 247 = (1996) 4 SCC 720; *Majjal v. State of Haryana* (2013) 6 SCC 798 - referred to. B C

Case Law Reference:

1999 (5) Suppl. SCR 59	referred to	para 8	D
(2002) 4 SCC 571	referred to	para 9	
2012 SCR 1012	referred to	para 10	
1996 (3) Suppl. SCR 247	referred to	para 10	E
(2013) 6 SCC 798	referred to	para 11	

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1517 of 2007.

From the Judgment and Order dated 06.09.2007 of the High Court of Gujarat at Ahmedabad in Criminal Appeal No. 531 of 2004. F

Ranjbir Singh Yadav, P. Kakra, Anzu K. Varkey, Nidhi (A.C.) for the Appellants. G

Pinky Behera, Hemantika Wahi, Subada Deshpanda for the Respondent.

The Judgment of the Court was delivered by

DIPAK MISRA, J. 1. Assailing the legal acceptability of H

A the judgment and order passed by the High Court of Gujarat at
 Ahmedabad in Criminal Appeal No. 531 of 2004 whereby the
 Division Bench of the High Court has given endorsement to the
 judgment passed by the learned Additional Sessions Judge,
 Fast Track Court No. 1, Jamnagar in Sessions Case No. 158
 B of 2001 wherein the learned trial Judge had found the
 appellants guilty of the offences under Sections 304B, 306 and
 498A read with Section 34 of the Indian Penal Code (for short
 "IPC") and Section 4 of the Dowry Prohibition Act, 1961 and
 imposed the sentence of rigorous imprisonment of seven years
 C and a fine of Rs.1,000/- on the first score, five years rigorous
 imprisonment and a fine of Rs.1,000/- on the second score,
 eighteen months rigorous imprisonment and a fine of Rs.500/-
 on the third count and six months rigorous imprisonment and
 a fine of Rs.250/- on the fourth count with the default clause for
 the fine amount in respect of each of the offences. The learned
 D trial Judge stipulated that all the sentences shall be concurrent.

2. Filtering the unnecessary details, the prosecution case,
 in brief, is that the marriage between the appellant No. 1 and
 deceased Sandhya, sister of the informant, PW-2, was
 E solemnized on 24.9.1997. After the marriage the deceased
 stayed with her husband and the mother-in-law, the appellant
 No.2 herein, at the matrimonial home situate at Jamnagar in
 Patel Colony Sheri No. 1. In the wedlock, two children, one son
 and a daughter were born. On 11.9.2001, the informant, brother
 F of the deceased, got a telephonic call from the accused No. 1
 that his sister Sandhya had committed suicide. On receipt of
 the telephone call he travelled from Goa along with his friend,
 Sandil Kumar, PW-20, and at that juncture, the husband of
 Sandhya, Kamlesh, informed that the deceased was fed up with
 G the constant ill-health of her children and the said frustration had
 led her to commit suicide by tying a 'dupatta' around her neck.
 The brother of the deceased did not believe the version of
 Kamlesh, and lodged an FIR alleging that the husband and the
 mother-in-law of the deceased, after the marriage, had been
 H constantly asking for dowry of Rs.2 lacs from the father of the

deceased, but as the said demand could not be satisfied due to the financial condition of the father, the husband and his mother started ill-treating her in the matrimonial home and being unable to tolerate the physical and mental torture she was compelled to commit suicide. Be it noted, as the death was unnatural, the police had sent the dead body for post mortem and the doctor conducting the autopsy opined that the death was due to suicide. After the criminal law was set in motion on the base of the FIR lodged by the brother, the investigating officer examined number of witnesses and after completing all the formalities laid the charge sheet under Sections 304B, 306 and 498A read with Section 34 IPC and under Section 4 of the Dowry Prohibition Act, 1961 before the competent Court, who, in turn, committed the matter to the Court of Session.

3. The accused persons denied the allegations and claimed to be tried. The prosecution, in order to establish the charges levelled against the accused persons, examined 22 witnesses and got marked number of documents. The defence chose not to adduce any evidence.

4. The learned trial Judge principally posed four questions, namely, whether the accused persons had inflicted unbearable torture on the deceased as well as caused mental harassment to make themselves liable for punishment under Section 498A IPC; whether the material brought on record established the offence under Section 304B read with Section 34 IPC; whether the physical and mental torture on the deceased compelled her to commit suicide on 11.9.2001 as a consequence of which the accused persons had become liable to be convicted under Section 306 read with Section 34 IPC; and whether the accused persons had demanded a sum of Rs.2 lacs towards dowry from the parents of Sandhya so as to be found guilty under Section 4 of the Dowry Prohibition Act. The learned trial Judge answered all the questions in the affirmative and opined that the prosecution had been able to prove the offences to the hilt and, accordingly, imposed the sentence as stated hereinbefore.

A
B
C
D
E
F
G
H

A 5. Grieved by the judgment of conviction and the order of
 sentence the appellants preferred Criminal Appeal No. 531 of
 2004. The High Court at the stage of admission had suo motu
 issued notice for enhancement of sentence which was
 eventually converted to Criminal Revision Application No. 444
 B of 2007. The State had preferred Criminal Appeal No. 1889
 of 2004 for the self-same purpose. The appeals and the
 revision application were disposed of by a common judgment
 dated 6.9.2007 whereby the Division Bench of the High Court
 concurred with the view expressed by the learned trial Judge
 C and, accordingly, dismissed the appeals preferred by the
 accused as well as by the State and resultantly Criminal
 Revision initiated suo motu by the High Court also stood
 dismissed. The non-success in the appeal has compelled the
 accused-appellants to prefer this appeal by special leave.

D 6. We have heard Mr. Ranbir Singh Yadav, learned
 counsel for the appellant No. 1, Ms. Nidhi, learned counsel for
 the appellant No. 2, and Ms. Pinky Behera, learned counsel
 appearing for the respondent-State.

E 7. In the present appeal we are constrained to note that
 the High Court has really not appreciated and analysed the
 evidence on record and it is perceptible that it has narrated the
 prosecution version, referred to the names of witnesses
 examined and the documents exhibited during the trial,
 reproduced the findings recorded by the learned trial Judge,
 F recorded the submissions of learned counsel for the respective
 parties and thereafter, referred to the post mortem report, the
 FSL report, inquest panchnama and other documentary
 evidence and, ultimately referring to the deposition of
 prosecution witnesses in a cryptic manner, has come to hold
 G that there is no lacuna in the oral evidence and the same has
 been duly corroborated by the documentary evidence. The High
 Court has dealt with the factum of suicide at some length which
 was not disputed. Thereafter, there has been advertence to the
 issue of enhancement of sentence in the appeal preferred by
 the State and how the said appeal did not merit consideration.
 H

As we perceive, the High Court, while dealing with a statutory appeal under the Code of Criminal Procedure, has failed to appreciate and scrutinize the evidence in proper perspective, and the reasons ascribed by it for accepting the evidence and concurring with the view of the trial court is not supported by any acceptable reason.

8. At this juncture, we are obliged to state that though it may be difficult to state that the judgment suffers from sans reasons, yet it is not at all difficult to say that the reasons ascribed are really apology for reasons. If we allow ourselves to say so, one may ascribe certain reasons which seem to be reasons but the litmus test is to give seemly and condign reasons either to sustain or overturn the judgment. The filament of reasoning must logically flow from requisite analysis, but, unfortunately, the said exercise has not been carried out. In this context, we may refer with profit to the decision in *Padam Singh v. State of U.P.*¹, wherein a two-Judge Bench, while dealing with the duty of the appellate court, has expressed thus: -

"It is the duty of an appellate court to look into the evidence adduced in the case and arrive at an independent conclusion as to whether the said evidence can be relied upon or not and even if it can be relied upon, then whether the prosecution can be said to have been proved beyond reasonable doubt on the said evidence. The credibility of a witness has to be adjudged by the appellate court in drawing inference from proved and admitted facts. It must be remembered that the appellate court, like the trial court, has to be satisfied affirmatively that the prosecution case is substantially true and the guilt of the accused has been proved beyond all reasonable doubt as the presumption of innocence with which the accused starts, continues right through until he is held guilty by the final court of appeal and that presumption is neither strengthened by an acquittal nor weakened by a conviction in the trial court."

[Emphasis supplied]

1. (2000) 1 SCC 621.

A 9. In *Rama and Others v. State of Rajasthan*², the Court has stated about the duty of the appellate court in the following terms: -

B "It is well settled that in a criminal appeal, a duty is enjoined upon the appellate court to reappraise the evidence itself and it cannot proceed to dispose of the appeal upon appraisal of evidence by the trial court alone especially when the appeal has been already admitted and placed for final hearing. Upholding such a procedure would amount to negation of valuable right of appeal of an accused, which cannot be permitted under law."

C 10. In *Iqbal Abdul Samiya Malek v. State of Gujarat*³, relying on the pronouncements in *Padam Singh* (supra) and *Bani Singh v. State of U.P.*⁴, this Court has reiterated the principle pertaining to the duty of the appellate court.

D 11. Recently, a three-Judge Bench in *Majjal v. State of Haryana*⁵ has ruled thus: -

E "It was necessary for the High Court to consider whether the trial court's assessment of the evidence and its opinion that the appellant must be convicted deserve to be confirmed. This exercise is necessary because the personal liberty of an accused is curtailed because of the conviction. The High Court must state its reasons why it is accepting the evidence on record. The High Court's concurrence with the trial court's view would be acceptable only if it is supported by reasons. In such appeals it is a court of first appeal. Reasons cannot be cryptic. By this, we do not mean that the High Court is expected to write an unduly long treatise. The judgment may be short but must reflect proper application of mind to vital evidence and important submissions which go to the root of the matter."

2. (2002) 4 SCC 571.

3. (2012) 11 SCC 312.

4. (1996) 4 SCC 720.

H 5. (2013) 6 SCC 798.

12. Tested on the touchstone of the aforesaid principles we find that there is total lack of deliberation and proper ratiocination. There has been really no assessment of evidence on record. The credibility of the witnesses has not appositely been adjudged. Affirmative satisfaction recorded by the High Court is far from being satisfactory. We are pained to say so, as we find that the learned trial Judge has written an extremely confused judgment replete with repetitions and in such a situation it becomes absolutely obligatory on the part of the High Court to be more careful to come to a definite conclusion about the guilt of the accused persons, for their liberty is jeopardized. It may be stated at the cost of repetition that it is the sacrosanct duty of the appellate court, while sitting in appeal against the judgment of the trial Judge, to be satisfied that the guilt of the accused has been established beyond all reasonable doubt after proper re-assessment, re-appreciation and re-scrutiny of the material on record.

13. It can be stated with certitude that appreciation of evidence and proper re-assessment to arrive at the conclusion is imperative in a criminal appeal. That is the quality of exercise which is expected of the appellate court to be undertaken and when that is not done, the cause of justice is not subserved, for neither an innocent person should be sent to prison without his fault nor a guilty person should be let off despite evidence on record to assure his guilt. Ergo, the emphasis is on the duty of the appellate court.

14. Consequently, the impugned judgment and order passed in Criminal Appeal No. 531 of 2004 by the High Court is set aside and the appeal preferred by the appellants is remitted for fresh disposal. The High Court is requested to dispose of the appeal as expeditiously as possible so that the Sword of Damocles is not kept hanging on the head of the appellants. As the appellants are on bail, they shall continue to remain on bail on same terms and conditions till the disposal of the appeal by the High Court.

15. The appeal stands disposed of accordingly.

R.P.

Appeal disposed of.