Kamlesh Prabhudas Tanna & Anr vs State Of Gujarat on 26 August, 2013

Equivalent citations: 2013 AIR SCW 6648, 2014 CRI. L. J. 443, AIR 2014 SC (CRIMINAL) 259, AIR 2014 SC (SUPP) 1608, (2014) 1 MARRILJ 378, (2013) 130 ALLINDCAS 110 (SC), (2013) 4 BOMCR(CRI) 330, (2013) 4 DLT(CRL) 196, (2013) 3 CURCRIR 573, 2013 CRILR(SC MAH GUJ) 998, (2013) 56 OCR 1034, (2013) 10 SCALE 676, (2013) 3 DMC 358, 2013 CRILR(SC&MP) 998, 2013 (15) SCC 263

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Bench: Dipak Misra, K. S. Radhakrishnan

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1517 OF 2007

Kamlesh Prabhudas Tanna & Another ... Appellants

Versus

State of Gujarat ...Respondent

J U D G M E N T

Dipak Misra, J.

Assailing the legal acceptability of 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 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 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 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 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 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 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 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.

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 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 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.

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.

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, 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 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. 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]

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: -

> "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."

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.

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

> "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."

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.

.....J. [K. S. Radhakrishnan] .....J. [Dipak Misra] New Delhi;

August 26, 2013.

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[1] (2000) 1 SCC 621
[2] (2002) 4 SCC 571
[3] (2012) 11 SCC 312
[4] (1996) 4 SCC 720
[5] (2013) 6 SCC 798
