

ABC 2016(I) State of Gujarat Vs. Mukesh Chhaganlal Nanera & Anr. (Guj) 519

ABC 2016 (I) 519 GUJ

ACQUITTAL & BAIL CASES

a

HIGH COURT OF GUJARAT

(R.P.Dholaria, J.)

Criminal Appeal No. 2560 of 2005

Decided on 7 April, 2016

b STATE OF GUJARAT - Appellant(s).

Versus

MUKESH CHHAGANLAL NANERA & ANR. - Respondent(s).

c Law Covered:- Code of Criminal Procedure, 1973 – Section 378(1)(3) – Appeal against acquittal – Indian Penal Code, 1860 – Section 107 – Suicide by consuming acid – Abetment to – Related witness – Evidence of – no evidence other than evidence of near relatives of the deceased – to connect the accused with the crime – Independent witness – not examined – Deceased – was raising
d quarrel with her mother-in-law – & talked with abusive language with her – Accused-husband intervened & slapped her – Held, cannot be considered to be a factor to drive her to commit suicide as the incident occurred due to fault on the part of the deceased – Acquittal upheld – Indian Evidence Act – Section 3 – relevant fact. (Para 8)

e Facts:- After the marriage the deceased was residing at her parental home. It was alleged that the deceased victim was subjected to physical and mental torture and the deceased came to her parental home twice or thrice in the short period of two years. It is stated that she was persuaded to go to her matrimonial home. The deceased died by consuming acid. It was alleged that the deceased was beaten by the respondents accused. Ultimately, the complaint
f came to be lodged which resulted in the acquittal of the accused persons.

g It was observed by the honourable High Court that the learned Sessions Judge, while appreciating the evidence of the complainant has recorded the finding that the deceased was raising quarrel with her mother-in-law and talked with abusive language with her, because of which her husband intervened and slapped the deceased which cannot be considered to be a factor to drive to commit suicide as the incident occurred due to fault on the part of the deceased who behaved with the mother-in-law in abusive language and in that moment. Acquittal was upheld.

h Law of relief:- Deceased behaved with her mother-in-law in abusive language, her husband intervened & slapped her, cannot be termed as instigation or abetment to commit suicide.

June 2016

Held:- Keeping aside evidence of the aforesaid witnesses who are near relatives of the deceased, no evidence has been brought on record to connect the accused with the crime in question. Learned advocate Mr.Dave for the respondents accused has argued that nearly statements of ten persons have been recorded who were residing nearby house of the present respondent No.1 accused but they have not been examined during the course of trial as they were not supporting the prosecution case. Learned Sessions Judge, while appreciating the evidence of the complainant has recorded the finding that as she had come to know from accused No.1 that prior to consuming acid, the deceased was raising quarrel with respondent No.2 - mother-in-law (since deceased) and talked with abusive language with her, because of which, accused No.1 intervened and slapped the deceased which cannot be considered to be a factor to drive to commit suicide as the incident occurred due to fault on the part of the deceased who behaved with the mother-in-law in abusive language and in that moment, accused No.2 who was son of the mother and husband of the deceased was intervened and in that weak moment, if accused No.2 has slapped the deceased cannot be termed to be a factor to attract the provisions of section 107 of IPC in the nature of either instigating or abetting to a person to drive to commit suicide.

Counsel:- For Appellant(s): Mr Rashesh Rindani, APP.
For Respondent(s): Mr R.D. Dave, Advocate.

JUDGMENT

R.P.DHOLARIA, J.: - 1. This Criminal Appeal is preferred by the State of Gujarat under section 378(1)(3) of the Code of Criminal Procedure, 1973 against the judgment and order of acquittal dated 16.6.2005 passed by learned Sessions Judge, Junagadh in Sessions Case No.54 of 2001.

2. The broad facts of the case are that deceased Sangeetaben married to respondent No.1 - accused two years prior to the date of incident. The accused No.2 was the mother-in-law of deceased victim. After the marriage, deceased Sangeetaben was residing with respondents accused in Junagadh. It is stated that the deceased victim was subjected to physical and mental torture and the deceased came to her parental home twice or thrice in the short period of two years. It is stated that she was persuaded to go to her matrimonial home. The deceased died on 5.4.2001 by consuming acid and eight days prior to the date of incident, the deceased had gone to her parental home

a because of harassment of respondents accused. It is alleged that on 5.4.2001, at 11.00 O'clock at night deceased Sangeeta was beaten by the respondents accused. Ultimately, the complaint came to be lodged.

b 2. In pursuance of the complaint, the Investigating Officer carried out the investigation and filed the chargesheet against the respondent accused. The charge was framed against the accused. The accused pleaded not guilty to the charge and claimed to be tried. At the end of the trial, after recording the statement of the accused under section 313 of the CrPC and hearing the arguments on behalf of the prosecution and the defence, the trial Court delivered the judgment and order, as stated above.

c 3. Being aggrieved by the same, the appellant State has preferred the aforesaid Criminal Appeal before this Court.

d 4. This Court has heard Mr.Rashesh Rindani, learned APP for the appellant State and Mr.R.D.Dave, learned counsel for the respondent accused.

5. This Court has gone through the paper book as well as the impugned judgment rendered by learned Sessions Judge.

e 6. During pendency of this appeal, accused No.2 - mother-in-law of the deceased died on 30.1.2007. Therefore, the appeal against her stands abated. Copy of the death certificate produced by learned counsel for the respondents is ordered to be taken on record.

f 7. On going through the impugned judgment, it clearly emerges that there was short span of marriage i.e. two years, during which period, the deceased used to stay more at her maternal home rather than matrimonial home. It also reveals that there was some dispute as regards to adjustment in the family, due to which, the deceased used to raise quarrel with her mother- in-law and prior to consuming acid on the fateful day, the deceased talked with her mother-in-law in abusive language for which the accused husband slapped her for the said behaviour, however, it is alleged that the deceased consumed acid and committed suicide. Learned Sessions Judge has elaborately dealt with and appreciated the evidence of all the witnesses examined on behalf of the prosecution. The prosecution has, mainly, examined Shantaben - mother of the deceased, Anilkumar - brother of the deceased and Navinkumar Dahyabhai Solanki - cousin brother. Learned Sessions Judge, while appreciating the aforesaid evidence on behalf of the prosecution, has recorded the

finding that while tendering oral evidence, material improvement has been made by the aforesaid witnesses and, hence, the evidence laid by the prosecution so far as relatives of the deceased is concerned, the same are not believable, as such. It is also brought on record so far as the material improvement made by the aforesaid witnesses is concerned during the course of trial. In that view of the matter, this Court is of the considered opinion that learned Sessions Judge has rightly discarded the evidence of the aforesaid witnesses.

8. Keeping aside evidence of the aforesaid witnesses who are near relatives of the deceased, no evidence has been brought on record to connect the accused with the crime in question. Learned advocate Mr.Dave for the respondents accused has argued that nearly statements of ten persons have been recorded who were residing nearby house of the present respondent No.1 accused but they have not been examined during the course of trial as they were not supporting the prosecution case. Learned Sessions Judge, while appreciating the evidence of the complainant has recorded the finding that as she had come to know from accused No.1 that prior to consuming acid, the deceased was raising quarrel with respondent No.2 - mother-in-law (since deceased) and talked with abusive language with her, because of which, accused No.1 intervened and slapped the deceased which cannot be considered to be a factor to drive to commit suicide as the incident occurred due to fault on the part of the deceased who behaved with the mother-in-law in abusive language and in that moment, accused No.2 who was son of the mother and husband of the deceased was intervened and in that weak moment, if accused No.2 has slapped the deceased cannot be termed to be a factor to attract the provisions of section 107 of IPC in the nature of either instigating or abetting to a person to drive to commit suicide.

9. In the result, this appeal fails and accordingly, it is dismissed.

Result:- Appeal dismissed.
