

(2008) 07 GUJ CK 0018
In the Gujarat High Court
Case No : Criminal Appeal No. 941 of 2000

Ahmadbhai Kalubhai Shaikh

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 17-07-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 428
Penal Code, 1860 (IPC) — Section 302, 307, 324, 326

Citation : (2008) 07 GUJ CK 0018

Hon'ble Judges : Z.K. Saiyed, J;A.M. Kapadia, J

Bench : Division Bench

Advocate : Sadhna Sagar, for the Appellant; Mukesh Patel, APP for Opponent 1, for the Respondent

Judgement

Z.K. Saiyed, J.—The present Appellant/original accused in Sessions Case No. 29 of 1999 was charged and tried by the learned Additional Sessions Judge, Sabar Kantha at Himatnagar, for the offences punishable under Sections 302 307 326 and 324 of Indian Penal Code (for short "IPC").

2. The facts of the prosecution case that on 22.11.1998 the complainant was constructing the work of Bathroom in the galary of the house of the complainant at that time to stop the said construction some threat was given by the accused persons. However, the complainant continued the said construction work. Therefore, at around 3.00 pm all the accused persons rushed to the place of the complainant and accused "appellant herein with the aid of accused No. 3" Sirajhusein, caused injury to Vaishali, daughter of the complainant by inflicting the knife blow on her chest and thereby she succumbed to the said chest injury. Other accused have also caused injuries to the witnesses. Thereafter, the complainant went to the Idar Police Station and lodged complaint before P.S.I. Rathod. The Police has registered the offence. After registering the complaint the inquest panchnama of the dead body was drawn. Panchnama of scene of offence was carried out in presence of two panch witnesses. Thereafter the dead body

was sent for Post Mortem to the Government Hospital. The statement of injured persons and other witnesses were also recorded. The Muddamal was sent to the Forensic Science Laboratory for examination. After receipt of the Post Mortem Report and the Report from the F.S.L. and on completion of investigation, the Police filed charge-sheet against the present appellant/accused.

3. After filing of the charge-sheet, in the present case, as the offences registered against the accused/appellant are exclusively triable by the Court of Sessions, the learned JMFC, Idar, committed the said case to the Court of Sessions, Sabar Kantha at Himatnagar. Thereafter the charge (Ex.8) was framed against the accused persons.

4. In order to bring home the charge levelled against the accused, the prosecution has examined in all 12 witnesses and relied upon their oral testimonies. They are as under:

P.W. 1 - Complainant Shaileshkumar Mahendrabhai Doshi at Exh. 19;

P.W. 2 - Injured Anjuben Shaileshkumar Doshi, Ex.21;

P.W. 3 - Injured Jaiminbhai Shaileshkumar Doshi, Ex.22

P.W. 4 - Injured Bhumikaben Shaileshkumar Doshi, Ex.23

P.W. 5 - Dr. Purshottambhai Kalabhai Gohil, Ex.27

P.W. 6 - Dr. Anupsinh Hiraji Thakur, M.O., Ahmedabad, at Ex. 33;

P.W. 7 - Dahyabhai Jivabhai Bhatiya at Exh.40;

P.W. 8 - Dilipkumar Fulchand Doshi, Ex.43, Panch

P.W. 9 - Hemendrakumar Virchandbhai Shah, Ex.47, Panch

P.W.10 - Pruthvisinh Somsinh Thakor, Ex.50;

P.W.11 - Pruthvisinh Parbatsinh Vaghela, Ex.54;

P.W.12 - Bhikhusinh Shivsindh Rathod, I.O., Ex.56

5. To prove the culpability of the accused, the prosecution has also produced and relied upon the following documentary evidence. They are as under:

(1) Complaint Ex.20;

(2) Inquest Panchnama-Ex. 23;

(3) Panchnama of Scene of Offence - 48;

(4) Panchnama of clothes on the dead body - 24;

(5) Panchnama of Muddamal knife and the shirt of accused; Ex.46;

(6) Panchnama of clothes of witness Jasmin and Anjuben; Exh.26;

- (7) Medical Certificate of witness Jaimin from Idar Hospital; Exh. 28;
- (8) Injury Certificate of witness Jaimin from Ahmedabad - Exh. 35;
- (9) Injury Certificate of witness Anjuben from Civil Hospital - Ahmedabad, Exh. 39;.
- (10) Death Certificate of deceased Vaishali-Exh. 32;
- (11) Post Mortem Report of deceased Vaishali-Ex, 31
- (12) Yadi of Muddamal-Exh. 59;
- (13) F.S.L. Report-Exh. 60;
- (14) Information of accused given by the Division Controller, of S.T. Corporation Ex. 57
- (15) Punishment given to the accused by the Divisional Controller, S.T. Corporation, during his service tenure, Exh. 58
- (16) Information regarding house of the complainant given by Idar municipality-Exh. 53;
- (17) Case papers of injured Anjuben Doshi, Ex.38
- (18) Transfer form of injured Anjanaben Doshi, Ex.37
- (19) Medical Case papers of Jaiminkumar Doshi, Ex.34
- (20) Transfer form of injured Jaiminkumar Shaileshbhai, Ex.36;
- (21) Copy of station diary, Ex.55

6. Thereafter, after examining the witnesses the statement of accused u/s 313 Cr. P.C. was recorded in which the appellant/accused has replied that false case is lodged against him.

7. After considering the oral as well as documentary evidence the learned Additional Judge vide impugned Judgment dated 11.9.2000 in Sessions Case No. 29 of 1999 held the appellant/accused No. 1 guilty to the offences charged against him. The appellant/accused was convicted and sentenced to suffer rigorous imprisonment for life with fine of Rs. 2000/- I/d to under go further simple imprisonment for 3 months for the offence u/s 302 I.P. Code; the appellant/accused was further convicted and sentenced to suffer rigorous imprisonment for 5 years with fine of Rs. 1000/- I/d to under go further simple imprisonment for 1-1/2 months for the offence punishable u/s 307 I.P. Code; the appellant/accused was also convicted and sentenced for rigorous imprisonment for 3 years with fine of Rs. 500/- I/d. to under go further simple imprisonment for one month for the offence u/s 326 I.P. Code; the appellant/accused was also convicted and sentenced simple imprisonment for one year with fine of Rs. 200/- I/d to further under go simple imprisonment for 15 days for the offence u/s 324

I.P. Code. All the sentences were ordered to run concurrently by the learned trial Judge. Remaining accused were acquitted by the learned trial Judge.

8. Being aggrieved by and dissatisfied with the impugned Judgment and order of conviction and sentence passed by the learned trial Judge, the present appellant - accused has filed this Appeal, through Jail.

9. Heard learned Advocate Ms. Sadhna Sagar for the appellant and Mr. Mukesh Patel, learned APP for the respondent State.

10. Mr. Mukesh Patel, learned APP has submitted that the office of the Government Pleader & Public Prosecutor has received letter dated 23.10.2007 from Shri H.B. Bhabhor, Deputy Superintendent, Central Jail, Ahmedabad, informing that the State Government has given set off and remitted the sentence of Prisoner No. D/7671-Ahmedbhai Kalubhai, on the occasion of "Gandhi Jayanti" on 2.10.2007. Mr. Patel has also produced the said letter dated 23.10.2007 along with the Order dated 27th September, 2007 passed by the Home Department, Government of Gujarat, Sachivalaya, Gandhinagar, in which it is observed as under:

A. Categories of Prisoners for release:

(a) In respect of prisoners undergoing sentence of life imprisonment for conviction u/s 302 IPC who have undergone 12 (twelve) years or more of actual imprisonment (indulging set-off u/s 428 of the Criminal Procedure Code and previous State remissions earned) as on 1.10.2007, full remission of the remaining period is granted.

(b) In respect of Male prisoners having attained 65 years and female prisoners having attained 60 years of age on or before 1.10.2007 undergoing sentence of life imprisonment for conviction u/s 302 IPC and who have completed five years or more of actual imprisonment (indulging set-off u/s 428 of the Criminal Procedure Code and previous State remissions earned) as on 1.10.2007, full remission of the remaining period is granted.

11. In the present case, as the appellant is aged about 70 years, clause (b) is applicable to the appellant.

12. In view of above, nothing survives in this Appeal as the appellant has already been released from Jail. The present Appeal is, therefore, disposed of as having become infructuous.