

(2009) 03 GUJ CK 0062
In the Gujarat High Court
Case No : Criminal Appeal No. 767 of 2001

Amratbhai Kanjibhai

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 02-03-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 85

Citation : (2009) 03 GUJ CK 0062

Hon'ble Judges : J.C. Upadhyaya, J;A.L. Dave, J

Bench : Division Bench

Advocate : B.S. Supehia, for the Appellant; M.R. Mengdey, APP, for the Respondent

Final Decision : Dismissed

Judgement

A.L. Dave, J.—The appellant challenges his conviction for the murder of his minor daughter Hiral by dashing her head with the trunk of a tree on 22/5/1997 in the outskirts of village Vadaj of Dabhoi Taluka of District Vadodara, by the Sessions Court, Vadodara and sentencing him to undergo rigorous imprisonment [RI] for life and to pay a fine of Rs. 500/-, in default to undergo RI for 6 months, by judgment and order dated 30/10/1998 in Sessions Case No. 189 of 1997.

2. As per the prosecution case, the appellant, his wife and his minor daughter Hiral, aged about 10 months, had gone to village Vadaj to attend a marriage ceremony in the family of the appellant's in-laws. There he has some dispute with his wife about leaving of Vadaj and his wife suggested that he may leave, if he has to go. The appellant, therefore, got angry with her and then took minor Hiral with him to a field and then dashed her head with trunk of a tree while holding her feet. Ultimately, resulting into death of the minor. The appellant thereafter, immediately approached Dabhoi Police Station and lodged an FIR against his own self for his act. On basis of the FIR, investigation was made and charge-sheet filed in the Court of the Ld. Judicial Magistrate First Class, Dabhoi, who in turn committed the case to the Court of Sessions, Vadodara and Sessions

Case No. 189 of 1997 came to be registered.

3. Charge was framed against the accused appellant at exh. 1, to which he pleaded not guilty and claimed to be tried.

3.1. On basis of the evidence led by the prosecution, the trial Court came to conclusion that the prosecution was successful in proving the charges against the accused appellant and, therefore, recorded his conviction for offence punishable u/s 302 of the Indian Penal Code [IPC] and sentenced him for RI for life as stated hereinabove. Hence, this appeal.

4. Learned advocate Mr. Supehia submitted that the allegation against the appellant is of a heinous and gruesome offence, but it has to be considered whether any offence is made out against the appellant. To support his case, Mr. Supehia submitted that even as per the admission of PW 1 - Sushilaben, the appellant was in habit of taking liquor and at times used to go out of control. It is also submitted that at the relevant time the appellant was drunk and, therefore, whatever he did would attract exception contemplated u/s 85 of the IPC. He, therefore, submitted that the appeal may be allowed.

5. Ld. APP Mr. Mengdey has opposed this appeal. According to him, Section 85 of the IPC cannot be attracted in facts of the present case. It is nobody's case that the liquor was administered on the accused without his knowledge or against his will and, therefore, his drunken condition cannot be equated with a situation where a person would go out of mind because of intoxicating drink administered on him.

6. Mr. Mengdey submitted that there are two eye witnesses to the incident, one is Khodabhai Chitabhai PW 2 and Somabhai Ambubhai Tadvhi PW 3. He submitted further that the FSL report indicates that the skin of the trunk of the tree, the clothes of the appellant and the soil, all carried blood stains of group of the deceased, namely "B". He also submitted that conduct of the accused has to be seen because after the incident, the appellant himself rushed to police and lodged FIR. Mr. Mengdey, therefore, submitted that the appeal may be dismissed.

7. We have examined the record and proceedings in context of rival side submissions. It cannot be disputed and has to be held that the deceased Hiral, aged about 10 months, died a homicidal death. The medical evidence in form of deposition of Dr. Asadulla Isamiya Saiyed, exh. 24 and postmortem notes exh. 25 would go to show that the deceased had suffered the fatal injuries on her head and there was bleeding therefrom. The cause of death is "shock due to head injuries". The occipital bone is broken in 3 pieces. There was fracture of left parietal bone and right parietal bone. Outer surface of brain was lacerated and came out as lump semisolid on cut of skull. It is nobody's case that the injuries caused and the result were outcome of an accident or self inflicting injuries. It, therefore, cannot be said that the trial Court committed an error in holding that the deceased Hiral met with a homicidal death.

8. The question that requires consideration is whether the appellant can be said to have committed the murder of his daughter Hiral. In this regard, evidence of the appellant's wife Sushilaben Amrutbhai Sodhaparmar exh. 9 has to be examined. It emerges from her evidence that after the dispute between her and the appellant, the appellant left the house with the child, snatching her away from the mother. He was searched for after about 12.30. They came across a police vehicle around 2 to 2.30. The police informed that they are wanted for murder of Hiral. Witness deposes that the appellant suspected her fidelity. She also admitted that the appellant was in habit of taking liquor and then he would go out of control. She admits that on the day of the incident also he was drunk when he came. She states that though he was drunk, he was conscious. It emerges from her deposition that her husband had deserted her. She denies the suggestion that she had dashed head of her daughter with the wall after her husband left.

8.1. PW 2 - Khodabhai Chhitabhai, is an eye witness and he states about how the incident occurred. He says that he had gone to the field for agricultural work. Usually he used to return home about 12 to 12.30 for his meal. The witness is cross-examined further to bring on record the fact that no T I Parade was arranged. His vision capacity is also tested and found to be in order during cross-examination.

8.2. PW 3 - Somabhai Ambubhai Tadvī is also an eye witness. He says that incident occurred about 12 to 12.30 hours. On that day he had gone to Naginbhai's field for agricultural work. He says that he had seen the appellant going with daughter and then dashing her head with the tree. The witness is tested in cross-examination, but nothing emerges therefrom to help the defence.

9. The ultimate outcome is that there are two eye witnesses - Khodabhai and Somabhai, who had seen the incident actually occurring and appellant dashing her minor daughter, aged about 10 months, with the trunk of the tree. The FSL report shows presence of blood on the skin of tree, on the shirt of the accused and the soil. The injuries suffered by the deceased were of a serious nature and ultimately resulted into her death. There is no reason to disbelieve these eye witnesses. Besides, the fact that FIR is lodged by the appellant himself, would go to show his conduct, which is then proved through the evidence of eye witnesses and evidence in form of FSL report and there cannot be any doubt about the correctness of the charges against the appellant duly proved and the trial Court is justified in recording his conviction.

10. So far as the contention that the appellant was drunk when the incident occurred and, therefore, case would be covered by Section 85 of the IPC is concerned, it cannot be accepted either, for the reason that the liquor is not claimed to have been administered on accused by others without his knowledge or against his will. If he has taken the liquor voluntarily, he cannot get benefit of exception.

10.1. Although the PW 1 - Sushilaben admits that the appellant was drunk, we find from the panchnama and evidence of PSI Chavda that when the accused was arrested, he was not found in a drunken condition. The arrest panchnama is at exh. 17.

11. In light of the foregoing discussion, we do not find any merit in the appeal. The appeal must fail and it stands dismissed.