

(2005) 09 GUJ CK 0010
In the Gujarat High Court
Case No : Criminal Appeal No. 665 of 1997

Anopsinh Gumansinh Dodiya

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 12-09-2005

Acts Referred:

Bombay Police Act, 1951 — Section 135, 37(1)
Criminal Procedure Code, 1973 (CrPC) — Section 313, 374(2)
Penal Code, 1860 (IPC) — Section 300, 302, 304

Citation : (2005) 09 GUJ CK 0010

Hon'ble Judges : J.M. Panchal, J;H.B. Antani, J

Bench : Division Bench

Advocate : B.S. Supehia, for the Appellant; N.D. Gohil, Assistant Public Prosecutor, for the Respondent

Judgement

H.B. Antani, J.—This appeal preferred u/s 374(2) of the Code of Criminal Procedure, 1973, is directed against the judgment and order dated 30.6.1997, rendered by the learned Additional Sessions Judge, Vadodara, in Sessions Case No. 136 of 1996, by which the appellant is convicted u/s 302 of the Indian Penal Code and sentenced to suffer R.I. for life and fine of Rs. 10,000/-, in default, S.I. for six months. The learned Judge has directed that out of the amount of fine, if paid, Rs. 5,000/- should be given to the widow of the deceased as compensation. The learned Judge has acquitted the appellant of the offence punishable u/s 135 of the Bombay Police Act and that is not challenged by the State Government.

2. The short facts giving rise to the present appeal are enumerated hereunder:

The appellant is the father of the deceased. The incident took place on 18.6.1996. Initially, the appellant, his wife, deceased, wife of the deceased and brother of the deceased were staying together. For some inexplicable reason, the appellant was insisting that the deceased should stay separate along with his wife. However, the deceased was insisting that till the marriage of his younger brother he should be allowed to stay in joint family, otherwise it would bring bad

name to the family. Even though the deceased requested the appellant to permit him to stay in joint family, the appellant had driven out the deceased from the house. Thereafter the deceased was staying with his wife in a separate house. The deceased was not having sufficient means and, therefore, he had hired bullocks for the purpose of cultivating the lands. The deceased had no plough and, therefore, on the day of the incident, he picked up plough belonging to the appellant. He asked the deceased not to use his plough. However, the deceased started preparation to use it saying that it was lying unused. The use of plough made by the deceased infuriated the appellant. The appellant went to his house and brought an axe with him and gave blows with blunt portion of the axe on the head and leg of the deceased. The wife of deceased, who was sweeping the floor, saw the incident. The deceased was immediately rushed to the hospital for treatment. It may be stated that on the day of the incident there was cyclonic storm and roofs of many houses were blown off and, therefore, initially information was conveyed to the police that the deceased had received injuries accidentally due to the fall of roof to see that name of family was not brought to disrepute and relations between the father and son were not further soured. The information was accordingly investigated. However, during the course of treatment, the deceased succumbed to his injuries. Therefore, Shardaben, wife of deceased Ramsingbhai lodged complaint on 18.6.1996 with Police Sub Inspector, Sankheda Police Station, who registered offence u/s 302 I.P.C. and Section 135 of the Bombay Police Act against the appellant. Investigation was carried out and the place where the incident took place, was visited. Panchnama in respect of place of incident was drawn. The panchnama of weapon, which was used in commission of the offence, was also prepared. Inquest panchnama in presence of panch witnesses was also prepared after which dead body was sent to Civil Hospital for autopsy. The investigating officer recorded statements of persons who were found to be conversant with the facts of the case. The muddamal articles which were seized during the course of investigation, were sent to F.S.L. for the purpose of obtaining detailed analysis. On receipt of report of F.S.L. and other materials in the case, the appellant was chargesheeted and produced before the learned J.M.F.C.Sankheda, who in turn, committed the case to Sessions Court, Vadodara for trial, as offence punishable u/s 302 IPC is exclusively triable by a Sessions Court, where it was numbered as Sessions Case No. 136 of 1996.

3. Charge against the appellant was framed by the learned Additional Sessions Judge vide Exh.2 for the offence punishable u/s 302 IPC and Section 135 of the Bombay Police Act. The charge was read over and explained to the appellant, who pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined (1) Shardaben Ramsingbhai as PW.1 at Exh.16, (2) Motising Jesingbhai Mangrola as PW.2 at Exh.18, (3) Dr.Suttpa Basu as PW.3 at Exh.19, (4) Ramsingbhai Bhimsing Dodiya as PW.4 at Exh.21, and (5) Umeshbhai Motibhai Joshi as PW.5 at Exh.24, to prove its case against the appellant. The prosecution also produced documentary evidence, such as panchnama of place of

incident at Exh.5, panchnama of clothes put on by the wife of the deceased at Exh.6, inquest panchnama of the deceased at Exh.7, panchnama of person of the appellant at Exh.9, report of F.S.L. at Exh.10, notification u/s 37(1) of the Bombay Police Act at Exh.11, complaint of Shardaben at Exh.17, postmortem notes of the deceased at Exh.20, panchnama of production of axe by the appellant etc., in support of its case against the appellant.

4. After recording of evidence of prosecution witnesses was over, the learned Judge explained to the appellant the circumstances appearing against him in the evidence of prosecution witnesses and recorded his further statement as required by Section 313 of the Code of Criminal Procedure, 1973, wherein he denied the case of prosecution, but, he did not lead any defence evidence.

5. The learned Additional Sessions Judge, after appreciating the entire gamut of oral depositions and documentary evidence, held that the prosecution has proved its case against the appellant for the offence punishable u/s 302 IPC. The learned Judge held that the evidence adduced by Shardaben Ramsing, wife of deceased Ramsing and Motising Jesingbhai conclusively established involvement of the appellant in the commission of the offence. According to the learned Judge, the deposition of Dr.Basu, examined by the prosecution at Exh.19, provided necessary corroboration to the prosecution case. Thus, it is held by the learned Additional Sessions Judge that the prosecution has, on the basis of oral depositions and documentary evidence, proved involvement of the appellant in the commission of the offence punishable u/s 302 IPC. In view of abovereferredto conclusions, the learned Judge has convicted the appellant for the offence punishable u/s 302 IPC and imposed sentence referred to earlier, by judgment dated June 30, 1997, giving rise to instant appeal.

6. Learned advocate Mr.Supehia, representing the appellant, submitted that the prosecution has examined five witnesses in order to prove involvement of the appellant in the commission of the offence, but, if the evidence adduced by P.W.1 Shardaben Ramsingbhai vide Exh.16 and that of PW.2 Motising Jesingbhai Mangrola, vide Exh.18, is perused in proper perspective, then it becomes clear that it is not in consonance with the deposition adduced by P.W.3 Dr.Suttpa Basu vide Exh.19. The learned advocate further submitted that evidence adduced by prosecution does not inspire the confidence to convict the appellant u/s 302 of I.P.C. and as the evidence on hand is sketchy, the appellant be given a benefit of doubt and acquitted. In the alternative, it was argued that the appellant assaulted the deceased on sudden provocation and, therefore, the offence would fall under Part-I of Section 300 IPC, because the appellant, in grave and sudden provocation caused death of the deceased, who gave provocation by mistake or accident. The learned counsel submitted that as the learned trial Judge has not taken into consideration the aforesaid aspect of the case, conviction of the appellant u/s 302 IPC should be converted into one punishable u/s 304 Part-I IPC and sentence undergone by the appellant by this time should be imposed on him for commission of offence punishable u/s 304 Part-I IPC.

7. The learned A.P.P. representing the State submitted that the learned Judge of the trial Court has rightly appreciated the evidence adduced by PW.1 Shardaben vide Exh.16 and P.W.2 Motising Jesingbhai vide Exh.18, and rightly held that the appellant had assaulted the deceased and, therefore, the case would fall under the provisions of Section 302 IPC. The learned A.P.P. submitted that taking into account the oral depositions and more particularly the depositions of the two eye witnesses and the panchnama of place of incident, evidence adduced by Dr.Basu vide Exh.19 r.w. postmortem report etc., the learned Judge has rightly convicted the appellant for the offence punishable u/s 302 IPC. According to the learned A.P.P., the appellant has not made out a case for imposing punishment under the provisions of Section 304 Part-I IPC and, therefore, the conviction and sentence awarded by the learned Sessions Judge be upheld. The learned counsel for the State submitted that in view of the overwhelming evidence against the appellant, no interference is called for with the judgment rendered by the learned Judge of the trial Court and the order of conviction and sentence passed by the learned Judge should be upheld.

8. This Court has heard Mr.B.S.Supehia, learned counsel for the appellant as well as Mr.N.D.Gohil, learned A.P.P. for the State, at length and in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case.

9. On perusal of the oral depositions adduced by the prosecution, more particularly, the evidence adduced by PW.1 Shardaben Ramsingbhai vide Exh.16 and that of PW.2 Motising Jesingbhai vide Exh.18, it becomes clear that the appellant had assaulted the deceased, as a result of which he sustained serious injuries and ultimately succumbed to his injuries in the hospital. The prosecution has, on the basis of the depositions adduced by Shardaben Ramsingbhai vide Exh.16 and that of Motising Jesingbhai vide Exh.18, Doctor's evidence vide Exh.19, inquest panchnama of the deceased vide Exh.7, postmortem notes issued by the hospital authorities vide Exh.20, proved that the appellant caused homicidal death of the deceased. The deposition of Shardaben Ramsingbhai establishes that the appellant was the author of the injuries inflicted on the deceased. Shardaben Ramsingbhai deposed at Exh.16 that the appellant caused injuries to the deceased with sharp-cutting portion of the axe. In her cross-examination, she has stated that injuries were not caused due to accident or fall of a roof to the deceased. Likewise, the evidence adduced by Motising Jesingbhai Mangrola also mentions about the injuries caused by the appellant to the deceased with sharp-cutting portion of the axe. However, nothing turns out from his cross-examination to dislodge the prosecution case. It could not be pointed out by the appellant that these witnesses were on inimical terms with him. Thus false involvement of the appellant in murder of his son stands completely ruled out. However, Shardaben has not stated in her deposition that the appellant had used blunt portion of the axe for causing injuries to the deceased. The deposition adduced by Shardaben Ramsing vide Exh.16 and that of Motising Jesingbhai

Mangrola vide Exh.18 stand contradicted by the evidence adduced by Dr.Basu, PW.3, vide Exh.19. The Doctor has deposed in his testimony that Injury No. 1, caused on the right side of the head, was contused lacerated wound admeasuring 10 cm x 2 cm x 1.5 cm. As per the Doctor, the injury was caused to deceased on his leg and it was an abrasion. In his cross-examination, the Doctor has further deposed that if the injuries were caused to the deceased with sharp-cutting instrument, the deceased would have sustained incised wound. The injury, caused to the deceased on his head, was not an incised wound. Thus, the deposition adduced by the Doctor is in contradiction with the deposition adduced by Shardaben Ramsing vide Exh.16 and Motising Jesingbhai Mangrola vide Exh.18. The evidence shows that the appellant was not ready to give plough to the deceased, but, the deceased was bent upon using the plough, though it was belonging to the appellant, and therefore, the appellant got infuriated . The provocation was not sought by the appellant and, therefore, on perusal of the entire evidence as well as documentary evidence in the right perspective, the case, in our view, would fall under Exception-I of Section 300 of I.P.C. However, there is no manner of doubt that the appellant caused injuries to the deceased and that act by the appellant was done, which caused death, with intention of causing such bodily injuries as is likely to cause death and, therefore, the provisions contained in Part-I of Section 304 IPC would be attracted to the facts of the case. The learned Judge has convicted the appellant for the offence punishable u/s 302 IPC. However, in view of the foregoing discussion, the appellant would be liable to be punished u/s 304 Part-I IPC and not u/s 302 IPC.

10. This Court has heard the learned advocates of the parties on the question of sentence to be imposed on the appellant for commission of the offence punishable u/s 304 Part-I IPC. This Court has also taken into consideration the mitigating circumstances, which were pointed out by the appellant before the trial Court when he was heard on the question of sentence. The learned A.P.P. has made available jail-remarks-sheet of the appellant for perusal of the Court. It indicates that the appellant has undergone sentence of 10 years and 8 months with remission. Having regard to the facts of the case, this Court is of the opinion that interest of justice would be served if the appellant is sentenced to R.I. for 10 years and 8 months as well as fine of Rs. 10,000/-, in default, R.I. for six months, for commission of offence punishable u/s 304 Part-I IPC.

In the net result, the appeal partly succeeds. Judgment dated June 30, 1997, rendered by the learned Additional Sessions Judge, Vadodara, in Sessions Case No. 136 of 1996 convicting the appellant u/s 302 of the Indian Penal Code and sentencing him to R.I. for life and fine of Rs. 10,000/-, in default, R.I. for six months, is hereby set aside. Instead, the appellant is convicted u/s 304 Part-I IPC and sentenced to suffer R.I. for 10 years and 8 months as well as fine of Rs. 10,000/-, in default, S.I. for six months. The order of compensation passed by the learned Additional Sessions Judge is hereby confirmed. Muddamal to be disposed of in terms of directions given by the learned Judge in the impugned judgment.