
(2012) 09 GUJ CK 0144
In the Gujarat High Court
Case No : Criminal Appeal No. 777 of 2006

Ansingbhai Bhikhabhai Rathva	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 25-09-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 320, 325

Citation : (2013) 1 GLR 675

Hon'ble Judges : Paresh Upadhyay, J; A.L. Dave, J

Bench : Division Bench

Advocate : Gajendra P. Baghel, for the Appellant; Neeraj Soni, Addl. P.P., for the Respondent

Judgement

A.L. Dave, J.—Present appeal arises out of a judgment and order rendered by Sessions Court, Vadodara at Chhotaudaipur in Sessions Case No. 72 of 2004 on 4-4-2006, convicting the appellant for the offence of murder of Sangitaben Shuklabhai Rathva punishing him under Sec. 302 of the Indian Penal Code and sentencing him to undergo R.I. for life and to pay a fine of Rs. 1,000/-, in default, further R.I. for one month. The facts of the case in brief are that the appellant was in love with Sangita. That relationship came to be snapped because of interruption of relations of the girl. The appellant was, therefore, annoyed and on 21-6-2004 at about 2-00 p.m. when Sangita had gone to the field of Karsan Bhura Baria and Hira Bhura Baria, the appellant attacked her and gave her kick and fist blows in abdomen and attacked her after making her fall to the ground. This incident was seen by Sudhaben-P.W. No. 4 who was examined at Exh. 23. After the incident, Sangita went home. On the way, Sangita informed about the episode to Kamlaben, her aunt, Sangita succumbed to the injuries on 23-6-2004 at about 8-00 p.m. She was taken to hospital on making complaint of pain in the abdomen, and ultimately, she was taken to Hospital where post-mortem was performed and it was found that she had suffered rupture of spleen. Externally, there were two contusions only. The Medical Officer, who had performed the post-mortem, was examined by the prosecution at Exh. 17, who

opined that she had died because of external and corresponding internal injuries. F.I.R. was lodged by Shuklabhai Nathubhai, father of Sangita on 24-6-2004 with Bodeli Police Station, on the basis of which, offence was registered, investigated, and ultimately charge-sheet was filed in the Court of learned J.M.F.C., Chhotaudaipur, who in turn, committed the case to the Court of Sessions and Sessions Case No. 72 of 2004 came to be registered.

2. We have heard learned Advocate Mr. Baghel for the appellant and learned A.P.P., Mr. Soni for the respondent-State of Gujarat.

3. Mr. Baghel's contention is that there is no specific evidence about the cause of death. The Doctor while preparing post-mortem had indicated that final cause of death can be given only after the report of chemical analysis of viscera is received and final certificate as to cause of death is not forming part of record. Mr. Baghel submitted further that as per opinion of the Doctor, the external injuries were not sufficient to cause death and the manner in which the incident is alleged to have occurred, even if taken at face value, would not indicate any other intention on the part of the appellant to cause death of Sangita. The conviction under Sec. 302 of the I.P.C., is therefore, ill-founded and may be set aside. At the best, the appellant can be said to have committed the offence of causing simple hurt.

4. On the other hand, learned A.P.P., Mr. Soni has opposed this appeal.

5. We have gone through the record and proceedings and we find that eye-witness to the incident is Sudhaben Tersingbhai Naik (P.W. No. 4 Exh. 23). Her version and entire prosecution version, even if taken at face value, would only indicate that the appellant was enraged because of interruption in his relationship with Sangita by her relatives, and therefore, at the relevant point of time, he gave her beating with fist and kick. The hurt that he caused was not so grave that Sangita would have died immediately. In fact, after the episode, Sangita went home walking. It is only on 23-6-2004 that she complained about severe pain, and ultimately, succumbed to the injuries. No weapon is used by the appellant and indisputably he has not used so great force with his hands or legs that the victim would have been invalidated due to impact of the injury. It is, therefore, not possible for us to uphold the conviction of the appellant for having caused murder of Sangita. For that matter, it is not even possible for us to conclude that he caused death of Sangita either with intention or with knowledge, and therefore, he cannot be held responsible even for culpable homicide not amounting to murder.

6. As per the evidence of the prosecution, the appellant was enraged because of termination of his relationship with Sangita, and as such intention to cause death or even knowledge that the act is likely to cause death of Sangita cannot be read in his action, and therefore, one trial Court committed an error in accepting the prosecution case and convicting the appellant for the offence of murder of Sangita punishing him under Sec. 302 of the I.P.C. The conclusion needs to be

set aside and is hereby set aside.

7. Now, comes the question, if not murder, what offence the appellant can be said to have committed, if any. In this context, evidence of eyewitness - Sudhaben is sufficient to show involvement of the appellant in the incident. He pushed the deceased to the ground and then gave her kick and fist blows, as a result of which, there were external contusions, but spleen was ruptured. There was bleeding from it which was found clotted in the abdominal cavity which ultimately caused death of the deceased. It has also come on record that Sangita was in severe pain before her demise, and therefore, in our view, Eighthly appearing in Sec. 320 of the I.P.C. would be attracted. Eighthly runs as under:

Eighthly:- Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

8. If the facts of the present case are considered, it is clear that the appellant caused hurt to Sangita and severe bodily pain was suffered by her during a space of 20 days from the date of incident. Therefore, the facts satisfy the parameters set out in Eighthly of Sec. 320 of the I.P.C. defining grievous hurt to deceased - Sangita. He is, therefore, convicted for that offence. He is not alleged to have used any weapon. Therefore, the accused-appellant can be said to have committed offence punishable under Sec. 325 of the I.P.C., which is punishable with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine. In our view, ends of justice would be met, if the appellant is punished to undergo R.I. for a period of two years with no change in fine. In the result, the appeal stands partly allowed. The conviction rendered by the learned Presiding Officer & Additional Sessions Judge. Fast Track Court No. 2, Chhotaudaipur, Vadodara in Sessions Case No. 72 of 2004 on 4-4-2006 is altered from one punishable under Sec. 302 of the I.P.C. to one punishable under Sec. 325 of the I.P.C. The sentence of appellant-original accused-Ansingbhai Bhikhabhai Rathva is altered from imprisonment for life with fine of Rs. 1,000/- to R.I. for two years with no change in fine.