
(2013) 12 GUJ CK 0009
In the Gujarat High Court
Case No : Criminal Appeal No. 1799 of 2010

Arvindbhai Alias Gopalbhai Udesing	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 26-12-2013

Acts Referred:

Citation : (2013) 12 GUJ CK 0009

Hon'ble Judges : K.S. Jhaveri, J;K.J. Thaker, J

Bench : Division Bench

Advocate : Dipak H. Sindhi, for the Appellant; C.M. Shah, Public Prosecutor, for the Respondent

Final Decision : Partly Allowed

Judgement

K.J. Thaker, J.—This is an appeal by the appellant-original accused, assailing the judgment and order of the learned Additional Sessions Judge, Nadiad, Dated : 14.02.1983, rendered in Sessions Case No. 153 of 1982, convicting him u/s 302 of the IPC and sentencing to undergo imprisonment for life. Before proceeding any further, the note of the fact may be taken that after the aforesaid judgment and order was passed and while the appellant was in judicial custody, he was released on parole on 08.08.1985 for a period of 15 days, and though, he was supposed to surrender before the jail authority on completion of the aforesaid period, he did not do so and remained absconding till he was arrested by police on 01.05.2010. In other words, the appellant remained absconding for about 25 years and it is pursuant to his arrest that he preferred the present appeal, challenging his conviction, as above.

2. The brief facts of the case of the prosecution, as set out before the trial Court, reads as under;

3. It is stated in the complaint of the alleged offence that the deceased happened to be the aunt of the appellant. It is, further, stated in the complaint that one of the daughters of the deceased, namely Kanuben, eloped with her neighbour

before about 12 months prior to the alleged offence and since then, the relations between both the families were strained. On the date of the alleged offence, i.e. on 09.07.1982, at about 05:30 p.m., while the deceased was going to answer the natural call, the appellant suddenly appeared with an axe and inflicted several blows on the deceased and on account of that the deceased expired on the spot.

4. On registration of the complaint, police carried out investigation into the alleged offence and on finding prima facie evidence against the accused, laid charge-sheet against him before the competent Court for trial.

5. In order to establish the guilt of the accused, the prosecution examined the following witnesses;

6. Over and above, the aforesaid oral evidences, the prosecution also produced the following documentary evidences in support of its case;

7. At the end of the trial, the statement of the accused u/s 313 of the Cr.P.C. came to be recorded, and then, the trial Court passed the aforesaid judgment and order. Hence, the present appeal.

8. Heard, Mr. Sindhi, learned Advocate for the appellant, and Ms. Shah, learned APP for State, and perused the material on record with their assistance.

9. In order to establish that the deceased died of homicidal death, the prosecution examined the doctor, who had performed PM on the body of the deceased, as P.W.-1. P.W.-1, in his examination-in-chief, stated that he had noticed following injuries on the body of the deceased at the time of PM;

(1) Abdomen distended.

(2) Incise wound, 7" X 1/2" X 1" in horizontal line bone deep - bone cut - wound extending from 2" above rt. ear to 4" above left ear.

(3) I.W. 3 1/2" X 1" curved in shape over left parietal bone in vertical direction bone deep.

(4) Abrasion 1 cm X 1 cm over bridge of nose.

(5) Abrasion 2 cm X 1 cm over rt. forearm.

(6) I.W. 4" X 1" deep up to Spinal column over lumbar spine with superficial linear cut extending in both directions from angle ground.

(7) I.W. 3" X 1" & 2" deep upto thoracic spine over inter scapular region.

(8) Superficial cut 2" cm length and 1/2 cm in breadth over nape of neck.

(9) Superficial cut 4" X 1/2 cm over interscapular region.

(10) I.W. 1 X 1/2 over left iliac crest.

10. According to this witness, injury Nos. 2 and 3 were serious enough to cause

death in ordinary course of nature, whereas, injury Nos. 6 and 7 were serious enough to cause death, likely. According to P.W.-1, the cause of death of the deceased was fracture of skull bone and cerebral lacerations. From the cross-examination of this witness, the learned Advocate for the accused failed to bring out anything which could help their case. Thus, the evidence of P.W.-1 leaves no manner of doubt in our mind that the death of the deceased was homicidal one.

11. The next aspect, having held that the deceased died of homicidal death, which comes up for our consideration is as to whether the trial Court was justified in holding the appellant guilty for the act of causing death of the deceased or not.

12. To prove that it was the appellant, who committed the alleged offence, the prosecution examined the daughter of the deceased, who was an eye-witness of the offence, as P.W.-3. P.W.-3, in her examination-in-chief, stated that on the date of the alleged offence, at about 05:30 p.m., her mother was proceeding to answer natural call and she was reading, sitting at the threshold of her door, at that point of time, the accused jumped over the thorny fence and reached near her mother and inflicted several blows of "farsi" on her and run away. This witness was thoroughly cross-examined by the learned Advocate for the accused, but, her evidence on material aspects remain uncontroverted.

13. The evidence of P.W.-6, who happened to be the second daughter of the deceased and another eye-witness of the alleged offence, are more or less similar to that of P.W.-3. In her examination-in-chief, this witness also recited the facts already given by her sister in her deposition. This witness was also exhaustively cross-examined by the learned Advocate for the accused. In her cross-examination, this witness denied the suggestion that she and her sister, i.e. P.W.-3, were not present, at the time of commission of the offence.

14. The case of the prosecution also gets support from the evidence of P.W.-7, who is an independent eye-witness of the offence. This witness, in his examination-in-chief, stated that on the date of the alleged offence, at about 05:30 p.m., he had gone to the house of the deceased for inquiring about bullock. At that time the deceased was going to answer natural call and then, the appellant suddenly came there with a "farsi" in his hand and inflicted blows on the deceased. This witness also, in his cross-examination, denied the suggestion that he had not witnessed the incident, but, since, he happened to be a relative of the deceased, he was deposing against the appellant.

15. P.W.-8 was a witness to the panchnama of discovery of muddmal "Farsi" at the instance of accused. This witness, in his examination-in-chief, narrated the entire procedure of said panchnama stating as to how he was called at the police station and on reaching there, when he asked the appellant as to what he wanted to say?, then, as to how the accused took them to the school and produced the blood stained "Farsi" from there, in their presence. This witness, then, identified the muddamal article No. 24 as the "Farsi", which was produced

by the appellant in their presence.

16. The evidence of P.W.-9, who had seen the accused proceeding towards the school with a blood stained "Farsi" in his hand, on the date of the alleged offence, at about 05:30 p.m., also supports the prosecution case on the aspect of the presence and participation of the appellant in the alleged offence.

17. The case of the prosecution also gets support from the evidence of (1) P.W.-2, who was discharging duties as Police Patel of village Mogar and who had noted down the report given by P.W.-3, (2) P.W.-4, who was discharging duties as Ravaliya of village Mogar and who had delivered the report given by P.W.-3 at Nadiad Rural Police Station, (3) P.W.-5, who had registered the offence, on receiving the report of the incident from P.W.-4 as well as (4) P.W.-10, who carried out investigation into the alleged offence.

18. The documentary evidences in the form of FIR, PM Note, Panchnama of place of offence etc. also supports the case of the prosecution. The report of FSL (Exhibit-13), which indicated that the presence of human blood of group "A", which was the blood group of the deceased, was found on muddamal article No. 7, i.e. the Farsi, clearly establishes the guilt of the appellant.

19. In view of the above discussion, we are of the opinion that the trial Court committed no error in holding the appellant guilty for the act of causing death of the deceased.

20. The next aspect which comes up for our consideration is, as to whether the trial Court was justified in holding that the act of the appellant would be covered by the provisions of Section 302 of the IPC. In that regard, it would be relevant to refer to the provisions of Section 299 read with Sections 300 and 304 of the Indian Penal Code, which read as under;

299. Culpable homicide:--Who ever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

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300. Murder:--Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or--

2ndly--If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or--

3rdly--If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or--

4thly--If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

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304. Punishment for culpable homicide not amounting to murder:-Whoever commits culpable homicide not amounting to murder shall be punished with 1[imprisonment for life],or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death,

Or

With imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

21. In the light of the above provisions, here, it would not be out of place to refer to a decision of the Apex Court in the case of Ankush Shivaji Gaikwad Vs. State of Maharashtra, . In that case, while the original accused Nos. 1 to 3 were passing through the filed of the deceased, wherein the crop of sugarcane was taken by the deceased, the dog of the deceased started barking at them and being aggrieved thereby original accused No. 1 hit the dog with an iron pipe and when the deceased objected to the same, there was exchange of hot words, which resulted into a scuffle, during which original accused Nos. 2 and 3 delivered kick and fist blows to the deceased, whereas, accused No. 1 inflicted blow of iron pipe on the head of the deceased, on account of which the deceased expired, subsequently. The trial Court as well as the High Court held the accused No. 1 guilty for the offence of murder and convicted him u/s 302. Being aggrieved there by the accused No. 1 approached the Hon''ble Apex Court and the Apex Court, taking into consideration the facts and circumstances of the case that there was a sudden quarrel, modified the conviction of the accused No. 1 from Section 302 to Section 304(II) of the Indian Penal Code.

22. In the case on hand, it is borne out from the material on record that the elder daughter of the deceased had eloped with a boy belonging to other community and on account of that the relations between the family of the appellant and that of the deceased were strained and being provoked by the same, the appellant committed the alleged offence. We are, therefore, of the opinion that the trial Court could not have convicted the appellant u/s 302 of the IPC and the ends of justice would met by substituting the conviction of the appellant u/s 304 (Part I) and sentencing him to undergo imprisonment for 10 years. In the result, the appeal is allowed in part. The judgment and order of the trial Court, Dated : 14.02.1983, recording conviction of the appellant u/s 302 of

the IPC is modified and the same is SUBSTITUTED with SECTION 304 (PART I) of the IPC and the appellant is sentenced to undergo imprisonment for TEN YEARS. It is, however, clarified that the appellant WILL NOT be granted any remission or any other benefit, till he undergoes actual imprisonment for NINE YEARS. It is, further, clarified that, as stated herein above, the consequences of the proceedings taken out by the competent authority, in regard to the act of absconding by the appellant, will be treated as INDEPENDENT and NOT CONCURRENT with the punishment for the present offence. A copy of this order be sent to the concerned jail authority, forthwith.