

(2013) 11 GUJ CK 0008
In the Gujarat High Court
Case No : Criminal Appeal No. 619 of 2010

Ashokbhai Ghelabhai Vasava

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 11-11-2013

Acts Referred:

Citation : (2014) 1 GLR 528

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

Bench : Division Bench

Advocate : Zubin F. Bharda, No. 1, for the Appellant; H.S. Soni APP for the Respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

K.J. Thaker, J.—The present appellant has preferred this appeal under sec. 374(2) of the Code of Criminal Procedure, against the judgment and order of conviction and sentence dated 25.12.2010 passed by the learned Sessions Judge, Narmada at Rajpipla in Sessions Case No. 22/2009, whereby, the learned trial Judge has convicted the present appellant - Accused under sec. 302 of IPC and sentenced to undergo life imprisonment and to pay a fine of Rs. 1000/- in default, to undergo further S/I for three months, which is impugned in this appeal. The brief facts of the prosecution case is that on 7/8.4.2009 at 12.00 hours in the night, the appellant had committed murder of deceased Movasibhai Damjibhai Vasava by inflicting dhariya blows on the head of the deceased because he had a doubt that the deceased had illicit relation with his wife. Therefore, the complaint was filed.

1.1 The appellant accused came to be arraigned for committing the murder and after the investigation was complete, the charge-sheet was laid against the present appellant. Thereafter, as the case was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions, which was given number as Sessions Case No. 22/2009.

1.2 Thereafter, the Sessions Court framed the charge below Exh. 8 against the appellant for commission of the offence u/s 302 of IPC and u/s 135 of the Bombay Police Act. The present appellant - Accused has pleaded not guilty and claimed to be tried.

1.3 To prove the case against the present appellant- Accused, the prosecution has examined the following witnesses:

1. PW-1 Dilipkumar Karsanbhai Parmar Ex. 10
2. PW-2 Rasikbhai Kashibhai Vasava Ex. 12
3. PW-3 Kashibhai Dadlabhai Ex. 13
4. PW-4 Sikandar Usmanbhai Ex. 21
5. PW-5 Rakeshbhai Ratilal Vasava Ex. 22
6. PW-6 Nishant Dhanjibhai Solanki Ex. 24

1.4 The prosecution also relied upon the following documentary evidences so as to bring home the charges against the appellant-accused.

1. PM Note Ex. 11
2. Inquest panchnama Ex. 14
3. Panchnama of scene of offence Ex. 15
4. Panchnama of clothes of Movasibhai Damjibhai Ex. 16
5. Panchnama Ex. 18
6. Panchnama of search of house of accused Ex. 18
7. Panchnama of search of house of accused Ex. 19
8. Medical certificate of Ashokbhai Ghelabhai Ex. 20
9. Complaint Ex. 25
10. Panchnama Ex. 27
11. Panchnama of person of accused Ex. 28
12. Dispatch Note Ex. 29
13. FSL Report Ex. 30
14. Serological report Ex. 31

2. Thereafter, after examining the witnesses, further statement of the appellant-accused under sec. 313 of CrPC was recorded in which the appellant-accused has denied the case of the prosecution.

3. After considering the oral as well as documentary evidence and after hearing

the parties, learned trial Judge vide impugned judgment and order dated 25.2.2010 held the present appellant- original accused guilty of the charge levelled against him under sec. 302 of IPC and convicted and sentenced the appellant-accused, as stated above.

4. We have heard learned advocate Mr. Zubin F. Bharda for the present appellant and Mr. H.S. Soni learned APP for the respondent-State.

5. Mr. Bharda learned advocate for the present appellant has contended that the trial court has committed an error in passing the impugned judgment and order, inasmuch as it failed to appreciate the material on record in its proper perspective, and hence, the present appellant deserves to be given the benefit of doubt and be acquitted. Mr. Bharda has taken us through the evidence of all the witnesses whose evidence was adduced before the learned trial Judge. He has also taken us through the documentary evidence produced before the learned trial Judge on which the conviction is based.

6. On the other hand, learned APP Mr. Soni has strongly opposed the contentions raised by the learned advocate for the present appellant and has submitted that the trial court has passed the impugned judgment and order after taking into consideration the facts and circumstances of the case as well as the material, in the form of oral and documentary evidence, produced before it and hence, no interference is called for and the appeal deserves to be dismissed.

7. Having considered minutely the evidence on record, oral as well as documentary evidence, which we have appreciated, re-appreciated and reconsidered in light of the latest decision of the Apex Court. Looking to the evidence of PW-1 Dr. Dilipkumar Karsanbhai Parmar Ex. 10, evidence of PW-2 Rasikbhai Kashibhai Vasava Ex. 12 and the evidence of PW-3 Kashibhai Dadlabhai Ex. 13 though turned hostile throw much light on the incident. The Medical Officer's evidence read with PM reporter at Ex. 11, goes to show that the deceased had the following injuries:

1. CLW over Rt. Frontal region of lateral 1/3 Rt. Eye-brow region, verticle 5x2 cm size bone deep, black coloured.
2. Correspondent to above CLW there is a 2nd verticle CLW to lateral 1/3 of Rt. Eye lid region 4.5x2 cm size bone deep, black coloured.
3. CLW on right mandibular region 5x2 cm in size bone deep from backward to forward.
4. 1.5 cm CLW over Rt. Upper lip region. Lip ruptured 1 cm in breadth.
5. Contusion mark on both side of lumbar spine region parallel to each other longitudinal. Sub-scapular 15 x 2.5 cm in size, black coloured.
6. Contusion mark over umbilicus transverse 5 cm on each side and 2.5 cm in breadth, black coloured.

7. Contusion mark on Lt. gluteal region 3 x 1.5 cm transverse, black coloured.

8. Contusion mark on upper 1/3 of late aspect of Lt. Thigh 5x2 cm black coloured.

8. These injuries were by the weapon which was recovered from the appellant. The trouser of the appellant also bears the blood stains which was found in the serological and FSL report.

9. Learned advocate Mr. Bharda for the appellant has submitted that the deceased was in habit of consuming liquor. He has contended that the main witness whose police statement that he was with the accused not supported the case of the prosecution. The ex. 28 panchnama of person of accused and the injuries would go to show that the incident has occurred on the spur of moment and there was no enmity and he has further submitted that he would once again relying on the decision cited before the learned trial Judge by his colleague and that the recovery or the discovery was totally such which would not bring home the charge levelled against the appellant. He has further submitted that at the most the case would fall within the purview of section 304 Part-II as it was the deceased who had armed himself with dhariya and even the accused was injured. There was scuffle between them and there were altercation of words as the deceased had abused the wife of the accused.

10. Looking to the injuries, we are of the view that no fault can be found with the learned trial Judge and finding of facts that it was culpable homicide amounting to murder and we cannot lose sight of the fact that though the muddamal dhariya its both the parts were separated when they were found and the other panchnamas and the articles also have been believed by the learned trial Judge. The blood stains found on the clothes of the accused are that of the deceased and the fact that doctor has opined that the weapon which was shown to him was capable of causing such injuries on the head of the deceased. We are not persuaded by the fact that it was an unintended and unmotivated culpable homicide. The fact that the accused had taken the deceased at 11.00 pm. The deceased had some illicit relations with the wife of the accused. All these factors go to show that it was motivated with intention and knowledge and hence the fact that the serious injuries go to show that the case cannot fall within the purview of section 304 Part-I or Part-II. Hence, the impugned judgment and order of conviction and sentence requires to be confirmed and appeal deserves to be dismissed.

11. We are in complete agreement with the findings, ultimate conclusion and resultant order of conviction and sentence passed by the trial Court and we are of the view that no other conclusion except the one reached by the trial Court is possible in the instant case as the evidence on record stands. Therefore, there is no valid reason or justifiable ground to interfere with the impugned judgment and order of conviction and sentence. In the result, this appeal is dismissed. The impugned judgment and order of conviction and sentence dated 25.2.2010 passed by the learned Sessions Judge, Narmada at Rajpipla in Sessions Case No.

22/2009 is confirmed. R & P to be sent back to the trial Court forthwith. However, it is clarified that life would not be till last breath and the State Government may consider his case for premature release after 14 years.