

(2024) 07 GUJ CK 0045

In the Gujarat High Court

Case No : Criminal Miscellaneous Application (Regular Bail) No. 1 of 2024,
Criminal Appeal No. 1126 of 2015

Bachubhai Sukabhai Khant Versus

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 18-07-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 313
Indian Penal Code, 1860 — Section 300, 302, 449, 504
Bombay Police Act, 1951 — Section 135
Evidence Act, 1872 — Section 27

Citation : (2024) 07 GUJ CK 0045

Hon'ble Judges : Ilesh J. Vora, J;Vimal K. Vyas, J

Bench : Division Bench

Advocate : Dr. Hardik K Raval, Shruti Pathak

Final Decision : Dismissed

Judgement

Ilesh J. Vora, J

1. The appellant came to be tried by the Sessions Court, Modasa, Sabarkantha for offences punishable under Sections 302, 449, 504 of the Indian Penal Code, 1860('IPC', for short) alongwith Section 135 of Bombay Police Act ('BP Act', in short) in Sessions Case no. 96 of 2013 (Old Sessions Case no. 120 of 2013). At the end of the trial, the appellant came to be convicted for offences punishable under Sections 302 and 449 of the Indian Penal Code, 1860 and sentenced as under:

Sections Punishment

S. 302 of the IPC

Imprisonment for life and fine of Rs. 5,000/-, in default RI for six months.

S. 449 of the IPC

RI for five years and fine of Rs. 1,000/-, in default RI for two months.

The judgement was rendered on 30.06.2014 and all sentences were ordered to run concurrently. The appellant was acquitted for the rest of the offences.

2. Facts in brief giving rise to file present conviction appeal as follows:

2.1 The accused Bachubhai Khant had killed deceased Karunaben, who was the wife of his real brother. The accused is a resident of Village: Pahadiya, Meghraj, Dist.: Sabarkantha. The deceased and the accused were residing in one compound at Village Pahadiya. The incident of killing the deceased was happened on 03.07.2013 at about 12:00 noon at Village Pahadiya. The husband of the deceased passed away before three months of the incident. After death of her husband, the deceased was living separately alone with two daughters and at the relevant time, she was pregnant. It is the case of the prosecution that the accused, who got divorced from his wife, had insisted the deceased to live with him in relationship as wife, however, she did not agree with the proposal, as a result of which, the accused had a grudge in a mind and to take revenge of it, on the day of incident i.e. 03.07.2013, at about 12:00 noon, he rushed to the house of the deceased with in his hand a weapon axe and inflicted two blows on the head of the deceased which resulted into her death on the spot. It is further case of the prosecution that after hearing the voice of the deceased, two sisters viz. Bijalben Khant and Induben Khant reached at the spot where they saw the accused, who was standing there with weapon axe and deceased was found in the pool of blood.

2.2 Two sisters, as referred above informed the complainant Dahiben Damor PW:2, who is sister in law of the deceased. The members of the parental home including the complainant came after some time at a place. Meanwhile, police was informed and the complaint was being lodged by witness Dahiben Damor, inter alia stating that accused Bachchubhai after the death of the husband of the deceased, had proposed to live with him as a wife for which deceased was not agreed and keeping the grudge in mind, she was killed by the accused.

2.3 Pursuant to the offence registered with Isri Police Station, Meghraj, the I.O. prepared a panchnama of place of occurrence and collected necessary blood samples and sent the dead body of the deceased for postmortem. On 04.07.2013, the accused surrendered himself before the police. In the presence of two witnesses, accused made a voluntary statement that, he would lead to the place where he had hidden the weapon axe of the offence. The investigating officer Mr. Desai PW-20, drew a preliminary panchnama of discovery of weapon and thereafter, the accused taken to the place where he had hidden the axe. At the instance of the accused, the axe was found at the ceiling of the house and same had been recovered and description thereof being mentioned in the later part of panchnama. The bloodstains were found in the weapon and the same was matched with the blood group of the deceased as per the FSL report. The I.O. also sent yadi to the revenue officer for preparing the map and recorded a

statement of witnesses. He found sufficient material for the charge of murder against the appellant and accordingly, the chargesheet came to be filed and the case was committed to the sessions court Modasa at Sabarkantha, which came to be culminated into Sessions Case No.96 of 2013.

3. On the basis of material on record, the charge was framed against the appellant at Exh. 3 and the appellant pleaded not guilty and therefore, he came to be tried by the Sessions Court accordingly.

4. In order to prove the case against the appellant, prosecution has examined 21 witnesses and exhibited 21 documents to prove its case as per the following table:

5. Oral evidence

PW no. 1 – Exh. 6

Dr. Vinodbhai Manglabhai Menat,

PW no. 2 – Exh. 13

Dahiben Dalpatbhai Damor,

PW no. 3 – Exh. 15

Bijalben Sukabhai Khant,

PW no. 4 – Exh. 16

Induben Sukabhai Khant,

PW no. 5 – Exh. 18

Babubhai Manjibhai Menat, Police Official

PW no. 6 – Exh. 21

Shanabhai Dhulabhai Bamania,

PW no. 7 – Exh. 22

Khimjibhai Tajubhai Khant,

PW no. 8 – Exh. 23

Sureshbhai Valjibhai Damor,

PW no. 9 – Exh. 24

Champavat Himmatsinh Arjunsinh,

PW no. 10 – Exh. 27

Pravinaben Prakashbhai Damor, panch witness

PW no. 11 – Exh. 29

Somabhai Nanjibhai Katara, panch witness

PW no. 12 – Exh. 33

Dhuliben Chandreshbhai Damor,

PW no. 13 – Exh. 35

Rameshbhai Jivabhai Khant, panch

PW no. 14 – Exh. 36

Kanubhai Salubhai Kharadi, panch

PW no. 15 – Exh. 40

Kavjibhai Harjibhai Dodha, panch witness

PW no. 16 – Exh. 44

Lakshmanbhai Valjibhai Khant, panch witness

PW no. 17 – Exh. 48

Mayankkumar Mahendrachandra Jani, Police Official

PW no. 18 – Exh. 50

Govindbhai Punjabhai Bhambhi, Police Official

PW no. 19 – Exh. 52

Jayantibhai Somabhai Khant, panch witness

PW no. 20 – Exh. 53

Rameshbhai Ranabhai Desai, investigating officer

PW no. 21 – Exh. 56

Prahladsinh Sonsinh Parmar, investigating officer

6. Documentary evidence

Exh. 7

Post Mortem report

Exh. 8

Certificate of cause of death

Exh. 9

Note to Medical officer

Exh. 14

Complaint (FIR)

Exh. 19

Extract of station diary

Exh. 20

Panchnama of recovery of the clothes from body of deceased

Exh. 24A

Note to Talati-cum-Mantri

Exh. 25

Certificate of Vadthali Gram Panchayat

Exh. 26

Map of scene of offence

Exh. 28

Inquest Panchnama

Exh. 30

Panchnama of place of incident

Exh. 41

Panchnama of examination of body of accused

Exh. 45

Discovery panchnama

Exh. 49

FSL report of place of incident

Exh. 51

Extract of station diary

Exh. 54

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Exh. 55

Note to medical officer

Exh. 57

FSL receipt

Exh. 58

Forwarding letter

Exh. 59

Notification

Exh. 60

FSL report

7. The accused upon being questioned under Section 313 of the Cr.P.C., 1973 (old) with regard to incriminating circumstances made against him in the evidence rendered by the prosecution and he denied it and not lead any evidence in defence.

8. After appreciation of the evidence and hearing the accused as well as the prosecution, and relying upon the following circumstances as proved, the Trial Court has convicted and sentenced the appellant - accused.

(i) The appellant accused Bachchubhai Khant and deceased Karunaben were residing in one compound at Village Pahadiya;

(ii) The husband of the deceased died in a natural way before three months of the incident i.e. 03.07.2013 and at the relevant time, she was having six months pregnancy;

(iii) The accused got divorced from his wife and forced the deceased to live with him as a wife for which deceased had refused the proposal'

(iv) On 03.07.2013, keeping the grudge in his mind, the accused went the house of the deceased with in his hand a weapon axe and inflicted two fetal blows on the vital part of the body i.e. head, resulting into her death;

9. Being aggrieved and dissatisfied with the impugned judgment and order passed by the trial Court, the appellant – original accused is before this Court by way of the present appeal.

10. Dr. Hardik Raval, learned counsel appearing on behalf of the appellant made the following submissions :

i. That the judgment and order of sentence is unjust and improper, as there is no sufficient evidence to establish the complicity of the accused in the alleged murder of his sister-in law. The day on which the incident occurred, no one had seen the offence, as the deceased as well as the accused living separately and at relevant time, both were alone in their respective house and therefore, in absence of any acceptable and convincing evidence, the learned trial Court convicted the accused.

ii. That the entire prosecution case is rest on circumstantial evidence. The circumstances from which the conclusion of guilt was drawn, have not been fully established. In order to establish the presence of the accused at the place, the prosecution has examined as many as 6 witnesses, who have not supported the case of the prosecution. The witness Induben Khant – PW-4, who is sister of the

accused, did not support the case of the prosecution. The learned trial Court mainly relied on the evidence testimony of PW-4 Induben and arrived at the conclusion that, the accused was found at the house and thereafter, he ran away with the weapon. However, the fact remains that the said witness, though admitted the presence of the accused in her chief-examination but in the cross, she has denied the presence of the accused at the scene of offence. Thus, the evidence of witness, who has been declared hostile can be relied, if there are some material on the basis of which said evidence can be corroborated. Here, there is no any corroboration to the witness PW-4 Induben, and therefore, the learned trial Court misdirected himself while relying on the evidence of Induben.

iii. That the motive for the offence is most important and relevant when the case is based on the circumstances evidence. There is no evidence to establish the facts that the accused was pressurizing the deceased to live with him as a wife and the witnesses examined by the prosecution have not supported to the prosecution on this aspect and therefore, in absence of evidence with regard to motive, the learned Trial Court erred in holding that the accused was having motive to kill the deceased.

iv. That the witnesses of the discovery panchanama have not supported and they were declared hostile. The evidence of Investigating Officer Mr. Desai PW-20, is not inspiring confidence so far as recovery of the axe and discovery of relevant fact is concerned, as he failed to narrate the sequence of events which leading to recording of disclosure statement. Thus, the disclosure statement made under Section 27 of the Evidence Act (old), has been wrongly relied by the trial Court.

11. In view of the aforesaid contentions, learned Counsel Mr.Raval has submitted that the circumstances relied upon by the trial Court have not established the guilt of the accused and therefore, the Trial Court proceeded on mere surmises and conjunctures without assessing the prosecution evidence in proper perspective. In such circumstances, he would urge that the judgment of conviction and order of sentence is not sustainable in eyes of law. Lastly, it was contended that the applicant has completed ten years of jail term and the manner in which the incident occurred, there is a lack of intention to kill the deceased and in heat of passion, without any premeditation, the incident took place and therefore, it is a case of culpable homicide not amounting to murder and the case of the accused would fall under the exception four to Section 300 and thus, the sentence may be modified accordingly.

12. On the other hand, learned APP Ms.Shruti Pathak appearing for the respondent State, opposing the contentions raised hereinabove by the appellant – accused, has contended that, the learned trial Court has properly considered and appreciated the evidence in its correct prospective and has rightly arrived at the conclusion that, after the incident, the accused was found at the place and considering his subsequent conduct, his presence was established. That, the learned trial Court has also considered the motive on the part of the accused as she did not succumb to the pressure of the accused. That, the Investigating

Officer in his deposition has narrated the entire sequence of the disclosure statement made before him and therefore, the knowledge of the accused which is relevant fact to the main incident, has been established. The accused failed to explain the entire sequence of events in his further statement recorded under Section 313 of the Cr.P.C (old) which is additional link to connect the accused to arrive at the conclusion that he was author of the crime.

13. In the aforesaid contentions, learned State Counsel has submitted that, the evidence of hostile witness to the extent it support to the prosecution can be acted upon and thus, so far as presence of the accused at the scene of offence is concerned, it has been established by the evidence of his real sister PW-4 Induben Khant. The recovery of the axe at the instance of accused upon which the blood stains was found and same was tallied with the blood group of the deceased, which has direct nexus between the injuries found on the body of the deceased. Thus, the circumstances relied upon by the prosecution have been proved and established and the conclusion drawn by the learned trial Court holding guilt of the accused are based on the evidence on record, which does not require any interference.

14. Lastly, she submitted that, the accused went to the house of the deceased and he was armed with the axe and considering the nature of injuries found on the vital part of the body, it can be inferred that the accused had intention to kill the deceased and thus, his case does not fall under the exception (iv) to Section 300 and his conviction on the Section 300 would be legal and proper.

15. We have considered the submissions advanced by learned counsel for the respective parties and perused the oral as well as documentary evidence as well as the findings recorded by the trial Court.

16. So far as oral evidence is concerned, the learned trial Court has mainly considered and relied on the evidence of Induben Khant PW-4 Exh. 16, Dr. V.M. Menat PW-1, Exh. 6, the complainant PW-2, Dahiben Damor and deposition of the IO PW-20 R.R. Desai and also relied upon the documentary evidence like PM report Exh. 7, the discovery panchnama of weapon Exh. 45 and FSL report Exh. 60. The remaining witnesses have not supported the case of the prosecution and after declaring them hostile, they did not support the case of the prosecution and their evidence has not been considered by the court.

17. It is relevant to refer the evidence of Dr. Vinod Menat, who conducted a PM of the deceased. During the PM he found two external injuries mentioned in column no 17 of the PM Exh. 7. The said injuries were in nature of CLW found on lateral side of upper part of the right neck and below the right ear as well as fracture of right shoulder. The internal examination mentioned in column 19 would show that the injuries of CLWs were on right temporal bone (12 cm X 5 cm X 6 cm in size 2" above right ear with fracture on right side of temporal part of bone about 12 cm X 5 cm. The brain material came out on the right side of temporal bone and there was a hemorrhage over right side of temporal region.

The cause of death was due to shock and hemorrhage on account of head and neck injuries. According to evidence of Doctor, the injuries were sufficient in the order in course of nature to cause death and same could be possible by weapon axe.

18. We have carefully examined the depositions of Induben Khant PW-4 Exh. 16. In the chief examination, she stated that after hearing the shouting she immediately went to the house of the deceased where she saw that the deceased due to head injuries profusely bleeding and was virtually dead and at that time, the accused was found standing nearby the door of the house and then he ran away. She denied the facts that the accused was forced the deceased to live with him as a wife. The prosecution declared her hostile and during the cross-examination, she denied the factum of statement recorded by the police and involvement of the accused herein.

19. The other material witness is complainant Dahiben Damor PW-2 Exh. 13. She is the sister-in law of the deceased. The deceased was used to complaint to her members of the parental home about his proposal to keep her as wife. The complainant is not the eye-witness and the accused was not present when she reached at the place.

20. The evidence of IO Mr. Desai PW-20 is also required to be considered because the trial Court has relied his testimony so far as discovery of weapon and disclosure statement made by the accused during the custody is concerned. The IO Mr. Desai in his deposition has categorically stated that in the presence of independent panchas, the accused while in custody, on his own free will and volition, made a statement that he would lead to the place where he had hidden the weapon – axe. He further stated that after preparing the preliminary memorandum to this effect, the panchas along with the accused proceeded to the place where the weapon was found. He further stated that at the instance of accused, he pointed out the place from where the axe was found and accordingly, in the second part of the panchnama, the disclosure statement to this effect and discovery of weapon having been mentioned.

21. We now advert to the circumstances which were sought to be relied upon by the prosecution to prove the guilt of the appellant.

22. The circumstances viz. (i), (ii) and (iii) as referred in Para-9 of this judgment, are that the deceased and the accused belong to Village Pahadiya and were residing at their village and the husband of the deceased died three months prior to the incident and on the day of incident i.e. 03.07.2013, the deceased was having six months pregnancy. It is not and could not be disputed that the deceased and accused were residing in a one compound of the village and therefore, it is proved that the deceased and accused were residing in a same village and their houses found to be adjacent to each other and it has been corroborated by the evidence of revenue officer who has produced the rough sketch of the scene of offence at Exh.26. It is also proved that the house of

witness PW:3 Bijalben Sukhabhai and PW:4 Induben Khant were located in the same compound where the accused is residing. Thus, the circumstances as referred above have been proved.

23. The forth circumstances relied by the prosecution relates to the motive as well as killing of the deceased by the accused. In this regard, the prosecution has relied on the testimony of the complainant and hostile witness Induben Khant and the evidence of the I.O. Mr.Desai, PWs:2, 3 and 20 respectively. The complainant Dahiben Damor PW:2 was the sister in law of the deceased and after receiving the information, she lodged an FIR Exh.14 stating inter alia that the accused being a brother in law of the deceased killed her because she did not agree with the proposal to live with the accused as wife. She had stated on oath with regard to motive of the accused and harassment meted out by the deceased. The second material witness PW:4 Induben who is the sister of the accused. In her evidence, she stated that after hearing the voice of the deceased, she rushed to the scene of offence where she saw the accused standing nearby the entrance door and the deceased lying in the pool of blood and after that, the accused ran away. It is no doubt true that witness Induben turned hostile, however, her evidence with respect to presence of the accused is inspiring confidence because the said statement was not denied specifically in the cross examination. The law in respect of appreciation of evidence of hostile witness is well settled. The Supreme Court in its various judgments held and observed that in case of appreciation of evidence of the hostile witness, it is the duty of the Court to carefully analyze the evidence and reached a conclusion whether that part of the evidence consistent with the prosecution case, is acceptable or not. The evidence of Induben so far as presence of the accused after the incident, would inspire confidence and it is material and relevant to establish the circumstances relied by the prosecution and the learned Trial Court has not committed any error of law while relying on the testimony of Induben. The accused being real brother in law instead of remaining presence at the place had absconded and on the next day, he was surrendered to the police. It is to be noted that at his instance, the weapon axe was discovered and recovered. In this regard, the evidence of I.O. PW:20 Mr.Desai is relevant to refer so as to establish the complicity of the accused in the alleged murder. On careful examination of the testimony of the I.O., it appears that in the presence of two independent panchas, the accused on his own free will made a statement that he would lead to the place where he had hidden the weapon of the offence and based on his statement, the I.O. along with the accused and panchas proceeded to the place where the weapon was kept by the accused and at the instance of accused, the weapon axe was recovered and seized. The I.O. has narrated the sequence of the event in his deposition. In such circumstances, the statement made by the accused related to discovery of the weapon by which the crime was committed, the said disclosure statement would be admissible against the accused in terms of Section 27 of the Evidence Act. The weapon axe was sent for FSL examination. The report Exh.60 would show that the bloodstain was found on the axe matched

with the blood of the deceased. Thus, the evidence of the I.O. on the issue of discovery of weapon and disclosure statement made under Section 27 of the Evidence Act is acceptable and believable. It is argued that the panch witnesses is turned hostile and therefore, the evidence of I.O. is interested in the result of the investigation cannot be relied. We are not agreed with the submissions. We found the evidence of the I.O., who discovered the material object is convincing and merely panch-witnesses have turned hostile, the evidence of the I.O. would not stand vitiated.

24. In such circumstances, we have no hesitation to hold that the discovery of the weapon and the statement to this effect as direct nexus with the injuries found by the doctor, who had opined that injuries were sufficient in ordinary course of nature to cause death and considering the nature of injuries would clearly show that there was intention to kill the deceased as it was on region of the head which is a vital part and the person causing injuries on vital part, the intention to kill can certainly be attributed to him. In absence of any indication or circumstances to show that the injuries inflicted were unintentional or that some other kind of injuries were intended to be inflicted, the presumption would be that the very injuries suffered by the accused was intended.

25. Thus, therefore, the circumstances relied by the prosecution, are proved and established as the presence of the accused with the weapon and with clear motive, the incident of assault resulted in the death of the deceased and the learned Trial Court while recording the findings of the guilt of the accused has not committed any error of law.

26. The alternate submission raised is that the accused is entitled to the benefit of exception four to Section 300 Indian Penal Code (old). We do not find any merits in the submissions. The exception four to Section 300 says that the culpable homicide is not murdered if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. In the instant case, the accused went to the house of the deceased with weapon axe. There is no explanation on his part that on the issue of keeping relation as a wife, the deceased was angry with him and quarrel took place between them. Thus, there was a clear motive on the part of the accused to cause death by weapon axe which has resulted into death of the deceased and the injuries were sufficient in ordinary course to cause the death and the two blows were aimed at a vital part and the degree of force was so high that the brain part came out which proves that the blows were inflicted with force. Thus, considering the peculiar facts and circumstances of present case and the evidence on record, the circumstances to bring the case under exception four to Section 300 do not exist.

27. For the reasons recorded, on careful reappraisal of entire evidence, we find that the prosecution has succeeded in establishing the foundational facts and by adducing reliable evidence in relation to the chain of circumstances, to prove the guilt of the accused and therefore, we do not find any reason warranting any

interference with the conviction of the appellant and sentence of life imprisonment awarded to him and other sentence as recorded above.

28. Resultently, present appeal stands dismissed and accordingly it is dismissed. The R & P be sent to the Trial Court henceforth.

29. In view of the dismissal of the main appeal, connected application i.e. Criminal Misc. Application No.1 of 2024 does not survive. Accordingly, the same stands disposed of as not survived.