
(2011) 07 GUJ CK 0069
In the Gujarat High Court
Case No : Criminal Appeal No. 1948 of 2005

Balubhai Somabhai Machhi	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 18-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374
Penal Code, 1860 (IPC) — Section 302, 504

Citation : (2011) 07 GUJ CK 0069

Hon'ble Judges : Bankim N. Mehta, J;A.L. Dave, J

Bench : Division Bench

Advocate : Apurva A. Dave, for the Appellant; A.J. Desai, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Bankim N. Mehta, J.—The Appellant accused has preferred this appeal u/s 374 of the Code of Criminal Procedure, 1973 and challenged the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Fast Track Court No. 7, Rajpipala on 23.8.2005 in Sessions Case No. 29 of 2005 convicting him for the offence punishable u/s 302 of the IPC and sentencing him to undergo life imprisonment and to pay fine of Rs. 500/-, in default, to undergo SI for 8 days.

2. According to the prosecution case, on 7.10.2004 at about 19:45 hrs., the accused in the house of Hiraben W/o Somabhai Vasava gave abuses to deceased Naresh as he suspected that said Naresh had illicit relation with his niece Chandanben and thereafter, attacked him with axe and thereby committed his murder.

3. On the basis of first information report lodged by Somiben Murarbhay, offence was registered and investigation was started. During the investigation, statement of witnesses were recorded, panchnama of scene of offence and inquest panchnama were drawn and postmortem of dead body of deceased Nareshbhay

was performed. At the end of investigation, charge sheet came to be filed against the accused for the offence punishable under Sections 302 and 504 of the IPC in the Court of JMFC, Rajpipla. As the offence was triable by Sessions Court, the case was committed to the Sessions Court and it was registered as Sessions Case No. 29 of 2005. The learned Additional Sessions Judge framed charge Exh-3 for the aforesaid offences against the accused. The charge was read over and explained to the accused. The accused pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution adduced evidence. On completion of recording of evidence, the incriminating circumstances appearing in the evidence against the accused were explained to him. The accused, in his further statement recorded u/s 313 of the Code of Criminal Procedure, 1973, stated that he is innocent and false case is filed against him. After hearing the learned Additional Public Prosecutor and learned advocate for the accused, the trial Court convicted the accused and sentenced him as mentioned herein above, but acquitted him for the offence punishable u/s 504 of the IPC. Being aggrieved by the said decision, the accused has preferred this appeal.

4. We have heard learned advocate Mr. AS Dave for the Appellant and learned APP Mr. Desai at length and in great detail. We have also perused the impugned judgment and record and proceedings of the trial Court.

5. Learned advocate Mr. Dave submitted that the evidence do not beyond reasonable doubt indicate that the accused was responsible for vital injuries to the deceased. He also submitted that there is only an eye witness to the incident and therefore, the trial Court committed error in relying upon all the evidence. He also submitted that looking to the nature of the injuries caused, the trial Court committed error in convicting the accused for the offence or murder, but the accused could have been convicted for lesser offence and therefore, the appeal is required to be allowed.

6. Learned APP Mr. Desai submitted that the eye witness's account clearly indicates involvement of the accused in the offence. Looking to the number of injuries found on the dead body and the fact that the Appellant has not been able to indicate as to how lesser punishment could be imposed, the trial Court was justified in convicting the accused for the offence of murder. Therefore, no interference is warranted in the impugned judgment and the appeal is required to be dismissed.

7. The medical evidence in the form of PW 8 Dr. Chandrashekhar Mangilal Mandoi Exh-29 indicates that he performed postmortem of dead body of deceased Nareshbhai. According to him, external injuries found on the dead body were recorded in postmortem report and such injuries were possible by muddmal axe. The witness has also deposed that the injuries were sufficient in the ordinary course of nature to cause death. The postmortem report Exh-31 indicates external injuries found on the dead body. It also indicates that the cause of death was shock due to hemorrhagic from right carotid artery and right jugular vein. In view of this evidence, it clearly emerges that the injuries found on dead body

were cause of death and therefore, the prosecution has been able to prove that the deceased died homicidal death.

8. PW 3 Hiraben Somabhai Vasava Exh-21 in her deposition has deposed that deceased Nareshbhai came to her house at about 7:00 in the evening to enquire about her husband who was dealing in fishing and was waiting on a cot in the house. At that time, the accused came to her house and started saying to said Nareshbhai as to why he keeps illicit relation with his niece and also picked up axe lying in the corner of the house and inflicted blows to Nareshbhai. She has also deposed that as she started shouting, the accused threw away the axe and ran away. In the cross examination, the witness has deposed that she had seen the accused beating Nareshbhai. She has also admitted that at the time of incident, she was alone present in the house. This evidence clearly indicates that when the deceased was waiting in her house, the accused came there, picked up axe and started giving blows to the deceased. As observed earlier, there are about 11 external injuries on the dead body of Nareshbhai. This clearly indicates that the deceased was brutally murdered. The evidence also do not indicate that there was any instigation from the deceased. Therefore, in our view, the deceased done to death without any provocation from the deceased. Therefore, the trial Judge was justified in convicting the accused for the offence of murder.

9. It also appears that muddamal axe was recovered from the place of incident and a panchnama in that regard was drawn. The prosecution has also produced panchnama at Exh-8 and has examined PW 1 Rasikbhai Chhaganbhai Exh-6 to prove the panchnama. In the cross examination, the witness has denied that his signature was obtained on a prepared panchnama. It also appears that muddamal axe was sent to the FSL for analysis. The FSL report Exh-38 indicates that blood group of "A" was found on the axe and the clothes of the deceased were also stained with blood marks of group "A". Therefore, it emerges that the deceased was having blood group "A" and the same blood group was found on the axe. Therefore, it is established beyond reasonable doubt that muddamal axe recovered from the place of incident was used in commission of offence.

10. In view of above, the trial Court was justified in relying upon the evidence of eye witness PW 3 Hiraben Somabhai and convicted the accused for the offence of murder of Nareshbhai. Learned advocate has not been able to point out any infirmity in the impugned judgment.

11. In the result, the appeal fails and stands dismissed. The judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Fast Track Court No. 7, Rajpipala on 23.8.2005 in Sessions Case No. 29 of 2005, is hereby confirmed.