

(2015) 08 GUJ CK 0060
In the Gujarat High Court
Case No : Criminal Appeal No. 1981 of 2010

Basirbhai Mohammadbhai Kureshi	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 21-08-2015

Acts Referred:

Bombay Police Act, 1951 — Section 135
Penal Code, 1860 (IPC) — Section 302, 304

Citation : (2015) 08 GUJ CK 0060

Hon'ble Judges : M.R. Shah, J;K.J. Thaker, J

Bench : Division Bench

Advocate : Sadhana Sagar, for the Appellant; Himanshu Patel, APP, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

M.R. Shah, J—Feeling aggrieved with the impugned judgment and order of conviction of sentence imposed by the learned Addl. Sessions Judge, FTC No. 4, Bhavnagar ("the trial Court", for short), Dated: 25.02.2010, in Sessions Case No. 18 of 2009, by which the learned trial Court has convicted the appellant, herein, the original accused, for the offence punishable under Section 302 of the Indian Penal Code and has sentenced him to undergo rigorous imprisonment for life and to pay fine of Rs. 500/- and in default to undergo further rigorous imprisonment for three months, the appellant, herein, the original accused, has preferred the present Criminal Appeal.

2. The appellant, herein, the original accused, was charge-sheeted by the concerned Police Officer/the Investigating Officer for the offence punishable under Section 302 of the Indian Penal Code and Section 135 of the Bombay Police Act, for committing the murder of the deceased Imran because of the knife blow given by the appellant, herein, the original accused. As the case was exclusively triable by the Court of Session, the case was committed before the learned Sessions Court, Bhavnagar, and the charge came to be framed against

the appellant, herein, the original accused vide Exhibit-4 for the offence punishable under Section 302 of the Indian Penal Code and Section 135 of the Bombay Police Act. At the time of trial, as the accused did not plead guilty, he came to be tried by the learned trial Court.

3. To prove the case against the accused for the offence with which he was charged, the prosecution examined the following witnesses;

4. The prosecution through the aforesaid witnesses also produced the following documentary evidences on record;

5. On appreciation of the evidence on record, more particularly, considering the deposition of the Dr. Devarshibhai Ashwainbhai Bhatt, Medical Officer, Sir T. Hospital, Bhavnagar, who had prepared the Inquest Panchnama (Exhibit-20) and Postmortem Note (Exhibit-21) and also on appreciation of the evidence of the eye-witnesses, i.e. PW Nos. 2 and 3, who were examined vide Exhibits-9 and 10 respectively, the learned trial Court held that the death of the deceased Imran was a culpable homicide and that the deceased Imran died because of the injuries inflicted by the appellant, herein, the original accused on the vital part of the body (Chest). On appreciation of the evidence, the learned trial Court held the accused guilty for the offence punishable under Section 302 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life and to pay fine of Rs. 500/- and in default to undergo further rigorous imprisonment for three months.

6. Feeling aggrieved and dissatisfied with the sentence imposed by the learned trial Court, the appellant, herein, the original accused, has preferred the present Criminal Appeal.

7. Ms. Sadhna Sagar, learned Advocate appearing for the appellant, herein, the original accused, has, as such, fairly conceded that death of the deceased Imran can be said to be a culpable homicide. However, she has vehemently submitted that the death of the deceased Imran cannot be said to be a culpable homicide amounting to murder. It is submitted, in the facts and circumstances of the case, that the manner in which the alleged incident took place, it cannot be said that it was the intention of the accused to commit murder of the deceased Imran. It is submitted by her that the alleged incident took place all of a sudden, at the spur of the moment, as the deceased Imran did not permit the daughter of the appellant, herein, the original accused, to get down from the car/vehicle in which they were traveling and he also did not permit the appellant, herein, the original accused to travel in the same vehicle because of the incident that had taken place earlier in the morning and due to that a quarrel took place between the deceased Imran and the appellant, herein, the original accused, and all of a sudden, at the spur of the moment the alleged incident took place in which the accused inflicted knife blows on the vital part (Chest) of the body of the deceased Imran due to which the deceased died. It is, therefore, submitted that the case would not fall under Section 302 of the Indian Penal Code, but, the one

under Section 304 (Part-I) of the Indian Penal Code.

8. Ms. Sadhna Sagar also took us through the depositions of the eye-witnesses, i.e. PW Nos. 2 and 3 in support of her submission as above and in support of the case of the appellant, herein, the original accused, that the incident took place all of a sudden, at the spur of the moment, stating that prior to the incident, there was no quarrel or altercation between the deceased Imran and the appellant, herein, the original accused, till they reached Bhavnagar, more particularly, parking lot of Top Three Cinema, i.e. the place of offence, especially, with respect to the aunty of the deceased Imran, namely Baharunnisa. Making the above submission, it is requested to modify the impugned judgment and order passed by the learned Trial Court and to convert the conviction of the appellant one under Section 304 (Part I) of the Indian Penal Code in place of Section 302 of the Indian Penal Code.

9. Present appeal is opposed by the learned APP, Shri. Himanshu Patel, appearing on behalf of the Respondent-State. He vehemently submitted that after taking into consideration all the facts and circumstances of the case and that on appreciation of the evidence on record, the learned trial Court has committed no error in convicting the appellant, herein, the original accused for the offence punishable under Section 302 of the Indian Penal Code and sentencing him to undergo imprisonment for life.

10. It is submitted that considering the fact that the accused inflicted knife blow on the vital part (Chest) of the body of the deceased Imran due to which the deceased expired, the death of the deceased Imran can be said to be culpable homicide amounting to murder. Under the circumstances, the trial Court has rightly held the accused guilty for the offence punishable under Section 302 of the Indian Penal Code. He, further, submitted that the appellant, herein, the original accused was not having good relations with his in-laws and in fact, it was at the insistence of the appellant, herein, the original accused that the aunty, Baharunissaben, of the deceased Imran was asked to get down from the vehicle in which they were traveling and due to that the relations between the accused and the deceased Imran had strained and when the deceased Imran told the accused also to get down from the vehicle in which they were traveling, it was not liked by the accused, and hence, the accused used deadly weapon (knife) and inflicted blows on the vital part (Chest) of the body of the deceased Imran. It is, therefore, submitted that the appellant, herein, the original accused, is rightly convicted for the offence under Section 302 of the Indian Penal Code. It is also submitted that the findings recorded by the learned trial Court that the deceased Imran died of homicidal death because of injuries inflicted on his vital part (Chest) of the body, and therefore, this Court may not interfere with the same in exercise of appellate jurisdiction.

11. Making the above submission, it is prayed that the present appeal be dismissed.

12. Heard learned Counsels for the parties at length. We have gone through the impugned judgment and order passed by the learned trial Court, convicting the appellant, herein, the original accused for the offence punishable under Section 302 of the Indian Penal Code and sentencing him to undergo imprisonment for life. We have re-appreciated the entire material on record and we have scanned the entire evidence.

13. At the outset, it is required to be noted that Ms. Sadhna Sagar, learned Advocate appearing on behalf of the appellant, herein, the original accused, fairly conceded that the deceased Imran died of homicidal death. Now, therefore, the case on behalf of the appellant, herein, the original accused, is that his case would fall under Section 304 (Part I) of the Indian Penal Code and not under Section 302 of the Indian Penal Code, as held by the trial Court. Therefore, now, the question is in a very narrow compass, as to whether the appellant, herein, the original accused, can be said to have committed the offence punishable under Section 302 of the Indian Penal Code, as held by the trial Court, or under Section 304 (Part I), as sought to be contended on behalf of the accused.

14. For the said purpose, the evidence of the eye-witnesses, Rafiyabanu (PW-2) and Azzunisa (PW-3) are required to be considered. Rafiyabanu, i.e. PW-2, in her deposition stated that when the proceeded towards Vartej, the accused said that he had objection against Baharunnisa (PW-8) traveling with them and that he would not travel with them, if, she continues to travel with them, and therefore, the deceased, Imran, asked PW-8 to get down from the vehicle and send them to Bhavnagar in another vehicle. Then PW-2 stated that they reached Top Three theater, Bhavnagar, at about 08:00 p.m., but, as it was late, they decided not to go to park of the Top Three theatre and they again get into the vehicle. At that point of time, when the accused tried to get into the vehicle, the deceased Imran told him not to travel with him, as he had not allowed the aunt of the deceased, i.e. PW-8, to travel with them. To which the accused replied, then, in that case, his daughters be also permitted to get down from the vehicle, which the deceased, Imran, objected and a quarrel took place between them which culminated into the alleged offence. The evidence of another eye-witness Azzunisa (PW-3) are also similar to that of PW-2. On considering the depositions of the eye witnesses, it emerges that the deceased Imran as well as the appellant accused and the witnesses all are related to each other and they had started together from Mahuva in a cruiser for Bhavnagar. It is not in dispute that when they left from Mahuva, there was no dispute between the appellant, herein, the original accused, and the deceased Imran and on the way, the deceased Imran had asked his aunt, Baharunnisa, and her daughter, who were also going to Bhavnagar, were made to sit, which was not liked by the accused. It appears that Baharunnisa belonged to the side of in-laws of the accused and he had strained relations with his in-laws. Thereafter, at the insistence of the accused, Baharunnisa and her daughter were asked to get down by the deceased Imran. It appears that, thereafter, they proceeded towards Bhavnagar through Vartej, Gogha and that on reaching Top Three Cinema at Bhavnagar at about 08:00

p.m., they all get down from the vehicle. But, as it was already late, they decided not to go into the park of Top Three Cinema and they all got back into the vehicle and at that time, it appears that the deceased Imran asked the accused not to ride with them to which the accused replied that there is no difficulty, but, the accused insisted that his daughters be also permitted to get down from the vehicle to which the deceased Imran objected. Thereafter, there were some hot exchanges between them, which led to altercation during which the accused inflicted knife blows on the vital part (Chest) of the body of Imran due to which he expired.

15. In that view of the matter, here, it would be relevant to refer to Column No. 17 of the Postmortem Note (Exhibit-21), which reads as under;

"17. External injuries on the body, its condition, size and direction be mentioned specifically and the age of the injury as well as the reason for the same be also mentioned...: (1) horizontal 18 cms. X 1 cms. cavity deep, red colour incise wound with 13 black colour stitches at (L) lateral lower below (L) shoulder tip (thorwotamy wound);

(2) carved 8 cms. X 1 cm. X cavity deep incised red colour wound at (L) axilla with 7 black colour stitches seen;

(3) horizontal two in number 2 cms. X 1 cm. X cavity deep red colour incise wound at (L) side of chest 5 cms. Below nipple in (L) anterior axillary line & 5 cms. Above nipple in (L) mid clavicular (ICT) wound);

(4) 4 X 1 cm. X 0.5 Cm. Red colour vertical incise wound with 3 black colour stitches at (L) anterior thigh 20 cm. Below (L) ASIT;

No cut # found."

Further, as per the PM note, the cause of death of the deceased was shock and hemorrhage due to injury to vital organ like lung by sharp cutting weapon.

16. Considering the aforesaid facts and circumstances, it appears that the quarrel/altercation took place between the accused and the deceased Imran subsequently because of the reason that the deceased Imran had to ask his aunt, Baharunnisa, and her daughter to get down from his vehicle and due to which the deceased Imran asked the accused to get down from his vehicle and when the accused asked to let his daughter also come with him, the deceased Imran refused to do so which led to the alleged offence. Thus, it is clear that the alleged incident took place all of a sudden, at the spur of the moment, which fact emerges from the depositions of the eye-witnesses PW Nos. 2 and 3, and therefore, it cannot be said that the death of Imran was a culpable homicide amounting to murder, punishable under Section 302 of the Indian Penal Code. Therefore, in our opinion, looking to the facts and circumstances of the case and the manner in which the alleged incident took place, the case of the accused would fall under Section 304 (Part I) of the Indian Penal Code, as it is true and it is not disputed that the accused inflicted knife blow on the vital part (Chest) of

the body of the deceased Imran and therefore, he knew that the injury is likely to cause death.

17. Having taken into consideration the facts and circumstances of the case, we are of the opinion that the trial Court has committed a grave error in convicting the accused for the offence punishable under Section 302 of the Indian Penal Code and by sentencing him to undergo imprisonment for life.

18. In view of the above discussion and for the reasons stated herein above, this appeal is PARTLY ALLOWED. The judgment and order of the trial Court, Dated: 25.02.2010, stands modified and the conviction of the appellant, herein, the original accused is MODIFIED from Section 302 of the Indian Penal Code to SECTION 304 (PART I) of the Indian Penal Code and he is sentenced to undergo rigorous imprisonment for a period of TEN YEARS, while maintaining the amount of fine as well as the default sentence. DISPOSED OFF, accordingly.