

(2011) 07 GUJ CK 0134
In the Gujarat High Court
Case No : Criminal Appeal No. 1544 of 2005

Bharatbhai Raijibhai Chauhan

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 21-07-2011

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 307

Citation : (2011) 07 GUJ CK 0134

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

Bench : Division Bench

Advocate : Apurva A. Dave, for the Appellant; A.J. Desai, APP, for the Respondent

Final Decision : Allowed

Judgement

Bankim N. Mehta, J.—The Appellant has preferred this appeal and challenged the judgment and order of conviction and sentence passed by the learned Presiding Officer, Fast Track Court, Anand, on 14.7.2005, in Sessions Case No. 23 of 2005, convicting him for the offences punishable under Sections 302 and 307 of the I.P. Code and Section 135 of the Bombay Police Act and sentencing him to undergo life imprisonment and to pay fine of Rs. 1,000/-, in default, to undergo SI for 15 days for the offence u/s 302 of the I.P. Code and to undergo RI for five years and to pay fine of Rs. 500/-, in default, to undergo SI for seven days for the offence u/s 307 of the I.P. Code. No separate sentence is awarded for the offence u/s 135 of the Bombay Police Act. Both the aforesaid sentences were ordered to run concurrently.

2. According to the prosecution case, accused was the brother-in-law of deceased Rekhaben. On 15.9.2005, in the evening, the accused gave a slap to Jaimin, son of the first informant. Keeping grudge of the same, on 16.9.2005, at about 5"O clock in the morning, the accused caused injury with dharia to the

deceased Rekhaben, wife of the first informant, who was sleeping on a cot outside the house and also caused injury to first informant Parshottambhai Rajibhai, who tried to intervene. On account of injuries, Rekhaben died.

3. On the basis of the FIR lodged by Parshottambhai Rajibhai, husband of the deceased - Rekhaben, before Vasad Police Station, an offence was registered and investigation was started. During the course of investigation, accused was arrested. At the end of investigation, charge sheet came to be filed against the accused for the offences punishable under Sections 302, 307 of the I.P. Code and Section 135 of the Bombay Police Act, in the court of learned J.M. F.C., Vasad. As the offence was exclusively triable by the Court of Sessions, the case was committed to the Sessions Court at Anand and it was registered as Sessions Case No. 23 of 2005. The learned Joint District Judge, Fast Track Court, Anand, framed charge vide Exhibit-7 against the accused for the aforesaid offences. The charge was read over and explained to the accused, who pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution adduced evidence. At the end of recording of evidence, the incriminating circumstances appearing against him in the evidence were explained to him. The accused in his further statement recorded u/s 313 of the Criminal Procedure Code, 1973, stated that he does not know anything and the assailant ran away after beating and he has been falsely implicated in the offence. After hearing the learned APP and learned Advocate for the accused, the Trial Court convicted the accused and sentenced him, as mentioned here-in-above. Being aggrieved by the said judgment and order, the accused has preferred this Appeal.

4. We have heard learned Advocate Mr. Apurva A Dave, for the Appellant and Mr. A.J. Desai, learned APP for the State, at length and in great detail. We have also perused the record and proceedings of the Trial Court.

5. Learned Advocate Mr. Dave for the Appellant submitted that the first informant has turned hostile and there is no other eye witness to the incident except child witness Jaimin. This witness also did not implicate the accused in the offence. Therefore, the Trial Court committed error in convicting the Appellant and, therefore, the appeal deserves acceptance.

6. On the other hand, learned APP Mr. Desai submitted that the medical evidence indicates that the death was homicidal and the evidence of child witness points out the involvement of the accused in the offence and, therefore, the learned Trial Court was justified in recording conviction of the Appellant and no interference is warranted in the impugned judgment and order of conviction and sentence passed by the Trial Court. Mr. Desai, therefore, urged to dismiss the appeal and confirm the judgment and order of conviction and sentence recorded by the Trial Court against the accused.

7. As regards the homicidal death, the evidence of PW-12 Dr. Rakesh , Exhibit-37 and Postmortem Report, Exhibit-19, indicate that the death was homicidal.

8. As regards the involvement of the accused, there is no dispute that PW-3

Parshottambhai Raijibhai Chauhan, Exhibit-24 and PW-5 Jayeshbhai Parshottambhai, Exhibit-27 were allegedly the eye witnesses to the incident.

9. The prosecution has examined PW-3 Parshottambhai Raijibhai Chauhan, the husband of the deceased - Rekhaben at Exhibit-24. This witness has lodged FIR at Exhibit-25. It appears from the evidence of this witness that he has not supported the prosecution case and has turned hostile. Therefore, learned APP carried out cross-examination. The cross-examination indicates that he supported the prosecution version about the involvement of the accused but in the cross-examination by the accused, he has again changed his version and denied the involvement of the accused. In view of this evidence, it is risky to rely upon the evidence of this witness to connect the accused with the offence.

10. The evidence of PW-5 Jayeshbhai Parshottambhai, Exhibit-27 indicates that he is the son of deceased Rekhaben and was sleeping with his father PW-3 - Parshottambhai Raijibhai Chauhan. The oral evidence of this witness indicates that he has not seen the incident and was sleeping at the time of incident. Therefore, this witness also did not implicate the accused in the offence.

11. In view of above, except these two witnesses, there is no other evidence to indicate that the accused was involved in the offence. Even, the prosecution, by examining these two witnesses, has not been able to establish the involvement of the accused in the offence. Therefore, in our view, the learned Trial Judge committed error in convicting the accused relying upon these evidence. Therefore, the impugned judgment and order of conviction and sentence of the Appellant - accused is required to be set aside and the Appellant - accused is required to be acquitted for the offences charged against him.

12. In the result, the appeal is allowed. The impugned judgment and order dated 14.7.2005, rendered in Sessions Case No. 23 of 2005, by the learned Presiding Officer, Fast Track Court, Anand, recording conviction of the Appellant-original accused-BHARATBHAI RAIJIBHAI CHAUHAN, for the offences punishable under Sections 302 and 307 of the Indian Penal Code and Section 135 of the Bombay Police Act and the sentence awarded to the Appellant -accused is set aside and the Appellant is acquitted of all the charges levelled against him. He shall be released forthwith if not required to be detained in connection with any other offence. Fine, if any, paid, the same shall be refunded to him.