
(2013) 11 GUJ CK 0012
In the Gujarat High Court
Case No : Criminal Appeal No. 940 of 2010

Bharatbhai Shantilal Thakor	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 11-11-2013

Acts Referred:

Citation : (2014) 1 GLR 706

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

Kaushal Jayendra 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 14-5-2010 passed by the learned Addl. Sessions Judge, First Fast Track Court, Ahmedabad (Rural) in Sessions Case No. 1 of 2009, whereby, the learned trial Judge has convicted the present appellant-accused under Sec. 302 of I.P.C. and sentenced to undergo life imprisonment and to pay a fine of Rs. 5,000/- in default, to undergo further S.I. for six months. He is also convicted under Sec. 201 of I.P.C. and sentenced to undergo R.I. for seven years and to pay a fine of Rs. 5,000/-, 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 8-4-2008 the complainant Ramilaben was at the resident of her daughter Vimlaben at Bavla. At about 8-00 p.m. the elder daughter of her son Bharatbhai namely Payal had come to Bavla from Fatehwadi and informed that her father is beating her, and therefore, she had come there. That on 9-4-2008, at about 8-00 a.m. in the morning, when complainant Ramilaben was at the resident of her daughter Vimlaben, at that time, appellant had come along with his two daughters, namely Bharati and Shital and informed them that on the last night, he had killed his daughter Sangita and had thrown her dead body in the lack of Sarkhej. 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. 1 of 2009.

1.2. Thereafter, the Sessions Court framed the charge below Exh. 3 against the appellant for commission of the offence under Secs. 302 and 201 of I.P.C. 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. P.W. 1 Dr. Hina Surendrakumar Exh. 9
2. P.W. 2 Ramilaben Shantilal Exh. 15
3. P.W. 3 Dhamabhai Nanjibhai Exh. 17
4. P.W. 4 Suresh Devabhai Exh. 18
5. P.W. 5 Ashok Jaswant Exh. 20
6. P.W. 6 Bharatiben Bharatbhai Exh. 22
7. P.W. 7 Parvatiben Natvarbhai Exh. 23
8. P.W. 8 Ashok Shantilal Exh. 25
9. P.W. 9 Kalidas Ambalal Exh. 26
10. P.W. 10 Pruthvisinh Bharatsinh Exh. 29
11. P.W. 11 Pratapsinh Fatesinh Exh. 37
12. P.W. 12 Anil Chunilal Exh. 48
13. P.W. 13 Biren Rasikbhai Exh. 50
14. P.W. 14 Dr. Hansaben Babubhai Exh. 55
15. P.W. 15 P.K. Brambhatt Exh. 58

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

1. Complaint Exh. 16
2. Inquest panchnama Exh. 19
3. Panchnama of scene of offence Exh. 38
4. Yadi for post-mortem Exh. 10
5. Panchnama of person of accused Exh. 51
6. Index Exh. 28

7. Panchnama of clothes of deceased Exh. 49

8. Death form Exh. 11

9. Post-mortem Note Exh. 12

10. Yadi for muddamal sent to F.S.L. Exh. 60

11. Receipt of muddamal Exhs. 30, 31

12. F.S.L. report Exhs. 33, 35, 36

13. Letter of F.S.L. Exhs. 32, 34

14. Statement of Bharatiben Bharatbhai Exh. 24

15. Copy of Station diary Exh. 27

2. Thereafter, after examining the witnesses, further statement of the appellant-accused under Sec. 313 of Cr.P.C. 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 14-5-2010 held the present appellant-original accused guilty of the charge levelled against him under Secs. 302 and 201 of I.P.C. and convicted and sentenced the appellant-accused, as stated above.

4. We have heard learned Advocate Mr. Gajendra P. Baghel for the present appellant and Mr. H.S. Soni learned A.P.P. for the respondent-State.

5. Mr. Baghel 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.

6. On the other hand, learned A.P.P. 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. It is a case of gruesome act of the father was revealed by himself in his confessions to his own mother that he had done away with his minor daughter of 27 years by inflicting serious injuries on her head. The mother, thereafter, informed the police and that is how the investigation was put into motion. The investigating authority even

found the dead body nearby the pond rather lake where the dead body was thrown by the heartless father. The father of five daughters, according to Mr. Baghel, who has prayed that some mercy be shown by contending that it was not motivated, intentional nor with knowledge that 2? years child would die.

8. Having read the entire judgment and the facts and the evidence on record, we are amply convinced that this is nothing else but brutality by a father. Even in the 21st century, he has shown aversion for a girl child. We have even persuaded by learned A.P.P. Mr. Soni that he had inflicted injuries on two other daughters also who were eye-witnesses. P.W. 6 Bharatiben Bharatbhai Exh. 22 has deposed against her father about his brutality. We are not convinced with the submission of Mr. Baghel that brutality was not there and it was unintentional and unknowledgeable act on the part of the accused. In Col. 17 and 19 of the post-mortem report, the following injuries were found:

Col. No. 17:

1. Bruise discolouration-Bruise over upper back from both shoulders and nape of neck extending up to 3-4th ribs.
2. Clotted blood around Lt. ear.
3. Avulsed tissues (destroyed) upto bone deep around 3 c.m. x 5 c.m. from Rt.
4. Avulsed tissues (destroyed) upto deep bone from Rt. palm.

Col. No. 19:

1. Blood present under scalp tissues over both fronts-temporal regions. 8. Haemorrhage over Rt. and Lt. frontal temporal region.

9. Therefore, having considered the totality of the facts and circumstances of the case, the reasons given by the learned trial-Judge, we are convinced to uphold the conviction under Sec. 302 and it would not fall within the purview of any of the exception as pleaded by the learned Advocate for the appellant as we are unable to persuade ourselves to hold that the appellant had no knowledge that the child of 2? years age would the if she was injured on the head with brutality. We are unable to convince ourselves that he had no intention of seeing that the child is not done to death. It was a calculated, motivated act of the accused, and therefore, the impugned judgment and order of conviction and sentence requires to be confirmed and the appeal deserves to be dismissed. We are not convinced to hold that he has four daughters, leniency should be shown to the appellant.

10. P.W. 4-Suresh Revabhai Solanki Exh. 18, who was panch witness of inquest panchnama. In his evidence, he has supported the panchnama. P.W. 1-Dr. Hina Surendrakumar Exh. 9, in her evidence has deposed that the deceased died due to head injury. P.W. 11-Pratapsinh Fatesinh Exh. 37, though turned hostile, has deposed that the police had called him at the residence of Bharatbhai where he found blood-stains on the floor. In cross-examination, he has also identified the muddamal and his signature and supported the panchnama. From the evidence

of witnesses, it appears that the prosecution has proved the case beyond reasonable doubt.

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 14-5-2010 passed by the learned Addl. Sessions Judge, First Fast Track Court, Ahmedabad (Rural) in Sessions Case No. 1 of 2009, is confirmed. R. & P. to be sent back to the trial Court forthwith.