

(2013) 07 GUJ CK 0028
In the Gujarat High Court
Case No : Criminal Appeal No. 774 of 2007

Bhavanji Kuvarji Thakore

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 03-07-2013

Acts Referred:

Citation : (2013) 3 GLR 2497

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

Bench : Division Bench

Advocate : Sadhana Sagar, for the Appellant; C.M. Shah, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

K.J. Thaker, J.—The present appellant-original accused No. 2 has preferred this appeal under Sec. 374(2) of the Code of Criminal Procedure, against the judgment and order of conviction and sentence dated 20-4-2007 passed by the learned Addl. Sessions Judge, Fast Track Court No. 2, Deesa in Sessions Case No. 32 of 2007, whereby, the learned trial Judge has convicted both the accused under Sec. 302 read with Sec. 34 of I.P.C. and sentenced to undergo R.I. for life and to pay a fine of Rs. 3,000/-, in default, to undergo further S.I. for three months. The accused are further convicted for the offence punishable under Sec. 120B of I.P.C. and sentenced to undergo R.I. for ten years and to pay a fine of Rs. 1000/-, in default, to undergo S.I. for one month. The accused are also convicted for the offence under Sec. 364 read with Sec. 34 of I.P.C. and sentenced to undergo R.I. for five years and to pay a fine of Rs. 1000/- in default, to undergo further S.I. for fifteen days. It is conveyed to the Court that the original accused No. 1 has also preferred appeal, however, the same was abated as he has passed away. Hence, the present appellant - original accused No. 2 has challenged the said impugned judgment and order in this appeal. The brief facts of the prosecution case as per the complainant is that on 10-11-2006, at about 10-00 a.m., in the morning, the complainant came to know that a Jeep

had met with an accident on the road leading to the sim of Ratanpur. Therefore, complainant, Joitaram Ramsangbhai Pandya, Thakor Popatji Ganeshji and the brother of complainant Laxmanbhai, came to the spot and they found the complainant's brother-in-law (sister's husband) lying dead in the Jeep. There were injuries on his eyes and mouth and blood stains were found on the face. The complainant found that it is not a case of accident, but it is a case of murder and they also found bloodstains on the back side of the jeep bearing registration No. GJ-8-A-8169. At that time, his sister was at village Sudrosan. Therefore, the complainant went to Sudrosan village and asked about his brother-in-law from his sister. She told him that he (deceased) had gone to Thara along with one Bhavanji Kuvarji Thakor residing at Asaldi village along with Ganpatji Thakor, residing at Sudrosan village with two other persons and up till now he had not returned. Then the complainant informed his sister that he is lying dead in the Jeep of Bhavanji and accused have beaten him on head and face. Therefore, complaint came to be filed.

1.1. The accused came to be arraigned for committing the murder and after the investigation was complete, the charge-sheet was laid against the present appellant-accused. 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. 32 of 2007.

1.2. Thereafter, the Sessions Court framed the charge below Exh. 6 against the accused for commission of the offence under Sec. 302 of I.P.C. The accused has pleaded not guilty and claimed to be tried

1.3. To prove the case against the accused, the prosecution has examined the following witnesses:

1. Talasibhai Mulabhai Solanki Exh. 10
2. Dr. Jagdishbhai Shivabhai Chaudhari Exh. 12
3. Varubhai Bhemabhai Bharwad Exh. 20
4. Ratabhai Dehlabhai Thakor Exh. 23
5. Sadikbhai Nanabhai Ghiya Exh. 24
6. Arjanji Shankerji Thakor Exh. 27
7. Ramabhai Shivabhai Thakor Exh. 39
8. Lilaben Vanaji Thakor Exh. 41
9. Laxmanji Shivaji Thakor Exh. 42
10. Joitaram Mansangbhai Pandya Exh. 43
11. Rameshji Bachuji Thakor Exh. 44
12. Lalitbhai Sadabhai Dabhi, P.S.O., Exh. 45

13. Bharatbhai Valjibhai Desai, P.S.I., Exh. 47

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

1. Post-mortem note Exh. 14
2. Death certificate Exh. 15
3. Discovery panchnama Exh. 21
4. Discovery panchnama Exh. 25
5. Panchnama of person of accused Exh. 28
6. Inquest panchnama Exh. 29
7. Panchnama of scene of offence Exh. 30
8. Panchnama Exh. 31
9. Panchnama of weapon Exh. 32
10. Panchnama of weapon Exh. 33
11. Panchnama of scene of offence Exh. 34
12. Panchnama of person of accused Exh. 35
13. Report regarding visit of offence place Exh. 36
14. Complaint Exh. 40
15. Letter Exh. 46
16. Report regarding dead-body Exh. 48
17. Report to add Secs. 364, 201 in F.I.R. Exh. 49
18. Despatch nondh Exh. 53
19. Despatch nondh Exh. 54
20. Letter written to F.S.L. Exh. 55
21. Report of F.S.L. Exh. 56
22. Serological report Exh. 57
23. Letter to P.S.I., Thara by F.S.L. Exh. 58
24. Letter to P.S.I., Thara by F.S.L. Exh. 59
25. Letter of F.S.L. Exh. 60
26. Biological report of F.S.L. Exh. 61
27. Serological report Exh. 62

1.5. Thereafter, after examining the witnesses, further statement of the accused under Sec. 313 of Cr.P.C. was recorded in which the accused have denied the case of the prosecution.

2.1 After considering the oral as well as documentary evidence and after hearing the parties, learned trial Judge vide impugned judgment and order dated 20-4-2007 has convicted the present appellant original accused No. 2 as stated above.

2.2. Being aggrieved by and dissatisfied with the aforesaid judgment and order passed by the Sessions Court, the present appellant has preferred the present appeal.

2.3. We have heard learned Advocate Ms. Sadhana Sagar for the appellant and learned A.P.P. Ms. C.M. Shah for the respondent-State.

3. The learned Advocate Ms. Sagar 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 to be given the benefit of doubt and be acquitted.

4. On the other hand, learned A.P.P. Ms. Shah 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. Learned A.P.P. has further contended that this is a case of brutal murder, and therefore, no leniency should be shown to the accused since the injuries are on the vital part of the body, hence, no interference is called for and the appeal deserves to be dismissed.

5. Having gone through the entire evidence oral as well as documentary, and considered the ocular version and the medical evidence, it goes without saying that the injuries on the deceased were not due to accident. The deceased was taken by four persons. The jeep belonged to accused No. 1, and thereafter, he was done away with a tommy. Learned Counsel submitted that the so-called weapon was not used by any of the accused. The vehicle turned turtled and there was no motive nor intention to do away with the deceased. In the recent decision of the Apex Court in the case of Bakshish Ram and Another Vs. State of Punjab, wherein, the Apex Court has held that the High Court should apply its independent mind and record its own finding by making independent assessment of evidence. On re-appreciation of the evidence also, we are unable to persuade our self that the deceased died of natural death or due to vehicular accident. The blood found on the clothes of deceased was of blood group-A, whereas the blood found from the place of offence, blood found from the seat-cover of the Jeep where as dead-body of the deceased was lying and the blood found on the

clothes of present appellant as well as blood found from the weapon used is of blood group-A, which proves that the appellant is involved in the offence. P.W. 1-Talsibhai Mulabhai Solanki Exh. 10 has identified the place of incident. P.W. 8-Lilaben Vanaji Thakor Exh. 41 has categorically stated in her evidence that her husband was taken away by Bhavanji Kuvarji Thakor and Ganpatji Thakor and he has not come back. This is what she conveyed to her brother P.W. 7-Ramabhai Shivabhai Thakor, complainant, Exh. 39. P.W. 7-Ramabhai Shivabhai Thakor, complainant, Exh. 39 also supports the prosecution case. P.W. 9-Laxmanji Shivaji Thakor Exh. 42 also supports the case of the prosecution. He has identified the dead-body in the jeep which was lying on the middle seat of the Jeep and the dead-body had sustained injuries on head and limbs. P.W. 10-Joitaram Mansangbhai Pandya Exh. 43 has categorically mentioned that he was directed to mention that it was an accident. He was told that he would be paid for the same but he has refused to do so. In this case, it would be necessary for us to rely on the old decision of the Privy Council in the case of AIR 1947 67 (Privy Council) as far as Sec. 27 of the Evidence Act is concerned. Therefore, as per the provisions of Sec. 27 of the Evidence Act, it is clinching proof that the vehicle and tommy are found, and therefore, the submission of the learned Advocate for the appellant that it was a vehicular accident, cannot be believed. The injuries sustained by the deceased and the evidence of doctor who performed post-mortem shows that both the eyes are macerated, lost its normal shape and structure, mouth semi-opened, blood clots are seen in the mouth. Face is stained with blood. The face is out at the root of nose, blood clots are seen in the both nostril. In Col. No. 17, both the injuries co-related with each other and multiple fractures of the skull bone. The skull is broken at many site. The soft tissue of brain is damaged, lost its normal shape and blood clots seen in the cranial cavity. All these coupled with the fact that the said doctor has opined that there is a opinion that death was due to severe head injury leads to the damage of brain and leads to the failure of vital organ of body leads to the death. This certificate Exh. 15 and the other evidence also goes to show that the recovery panchnama has to be believed in light of the latest decision of the Apex Court in the case of Rajendra Singh Vs. State of Uttaranchal, Therefore, looking to the totality of the facts, further aspect is that the blood found on the clothes of the accused Bhavanji, is blood group-A, and therefore, the appellant is involved in the offence. The finding of fact in Paras 30 and 40, more particularly, Para 41 cannot be found fault with, and we cannot persuade ourselves to take a different view than the one taken by the learned trial Judge. There was a motive and intention which are established from the evidence on record. The finding of fact for the offence under Sec. 364 of I.P.C. is concerned, the same is proved as the accused was last seen with deceased is borne out from the oral testimony of P.W. 8-Lilaben Vanaji Thakor Exh. 41 and other witnesses, and therefore, the provisions of Sec. 34 of I.P.C. has been rightly applied by the learned trial Judge. We do not think that any case is made out for any interference as ocular version, weapon used, motive and intention are established.

6. 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 20-4-2007 passed by the learned Addl. Sessions Judge, 2nd Fast Track Court, Deesa in Sessions Case No. 32 of 2007 is confirmed. R. & P. to be sent back to the trial Court, forthwith. However, life would not be till last breath and his case may be considered by the appropriate authority.