
(2013) 12 GUJ CK 0008
In the Gujarat High Court
Case No : Criminal Appeal No. 1982 of 2010

Dashrathbhai Chaturbhai Prajapati	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 26-12-2013

Acts Referred:

Citation : (2013) 12 GUJ CK 0008

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

Bench : Division Bench

Advocate : Tejas M. Barot, for the Appellant; C.M. Shah, APP, for the Respondent

Final Decision : Dismissed

Judgement

K.J. 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 4.10.2010 passed by the learned Addl. Sessions Judge, Fast Track Court No. 2, Mehsana in Sessions Case No. 1/2010, whereby, the learned trial Judge has convicted the present appellant-Accused under sec. 302 of IPC and sentenced to undergo life imprisonment. He is also convicted u/s 201 of IPC and sentenced to undergo R/I for five years, which is impugned in this appeal. At the out set, it is to be noted that as per the jail remarks, the appellant-accused is absconded since 5.11.2011 when he was released on furlough by this Court from 21.10.2011 to 4.11.2011.

The brief facts of the prosecution case is that it was alleged by the complainant that his daughter Rukhiben got married 15 years before with the present appellant and they had one daughter namely Disha. It was further alleged that there was no male child and therefore the appellant wanted to remarry for male child. It was further alleged that for this reason the appellant was ill-treating his daughter Rukhiben. It was also alleged that prior to 29.8.2009 the appellant had killed his daughter Rukhiben and grand-daughter Disha. Therefore, the complaint was filed. 1.2 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. 1/2010.

1.3 Thereafter, the Sessions Court framed the charge below Exh. 2 against the appellant for commission of the offence u/s 302 and 201 of IPC. The present appellant-Accused has pleaded not guilty and claimed to be tried.

1.4 To prove the case against the present appellant- Accused, the prosecution has examined the following witnesses:

1. Dr. Prakashbhai Laxmandas Shah Ex. 9
2. Dr. Pravinchandra Kameshwarchandra Patel Ex. 15
3. Ishvarbhai Mahadevbhai Prajapati Ex. 20
4. Manilal Punaji Prajapati Ex. 21
5. Dineshbhai Somabhai Prajapati Ex. 24
6. Kanubhai Somabhai Prajapati Ex. 25
7. Rameshbhai Ishvarbhai Prajapati Ex. 26
8. Chaturbhai Mahadevbhai Prajapati Ex. 27
9. Jitendrakumar Manilal Patel Ex. 30
10. Anandiben Jitendrakumar Patel Ex. 31
11. Lilaben Vishnubhai Patel Ex. 32
12. Haribhai Manilal Bhangi Ex. 35
13. Jyotsnaben Kanubhai Prajapati Ex. 36
14. Ashvinbhai Narayanbhai Prajapati Ex. 37
15. Shardaben Govindbhai Prajapati Ex. 38
16. Jashiben Rameshbhai Prajapati Ex. 39
17. Jayantibhai Shankarbhai Prajapati Ex. 40
18. Karsanbhai Satrambhai Chaudhary Ex. 41
19. Mahendrabhai Baldevbhai Patel Ex. 42
20. Labhuben Navinbhai Panchal Ex. 47
21. Navinbhai Viththalbhai Darji Ex. 48
22. Ganpatbhai Devjibhai Patel Ex. 49
23. Rajuben Jayendrabhai Ex. 50

- 24. Dr. Narendrabhai Rambhai Patel Ex. 51
- 25. Dr. Babubhai Madhabhai Patel Ex. 52
- 26. Patel Chimanbhai Devidas Ex. 54
- 27. Senghabhai Shankarbhai Ex. 55
- 28. Tejabhai Chaturbhai Prajapati Ex. 56
- 29. Shivabhai Gangaram Patel Ex. 57
- 30. Khengarbhai Bhulabhai Solanki Ex. 59
- 31. Ranjitsinh Nathubha Chauhan Ex. 63

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

- 1. Yadi for PM Ex. 10
- 2. Yadi Ex. 11
- 3. PM Report Ex. 12
- 4. Opinion about death of deceased Ex. 13
- 5. Yadi 16
- 6. PM Report Ex. 17
- 7. Report Ex. 18
- 8. Inquest panchnamas Ex. 22 & 23
- 9. Copy of school register Ex. 33, 34
- 10. Copy of register & pay slip Ex. 43 to 45
- 11. Medical certificate of accused Ex. 53
- 12. Depute order Ex. 60
- 13. Letter to PSO Ex. 61
- 14. Copy of station diary Ex. 62
- 15. Complaint Ex. 64
- 16. Application given to Mehsana Police Station Ex. 65
- 17. Panchnama of scene of offence Ex. 66
- 18. Panchnama of clothes of deceased Ex. 67
- 19. Receipt No. 515 Ex. 68
- 20. Letter Ex. 69

21. Letter of FSL Ex. 70
22. Panchnama Ex. 71
23. Missing Complaint given by accused Ex. 72
24. Bill of advertisement Ex. 73
25. Complaint given by Prajapati Tejabhai Ex. 74
26. Ranangi Nodh Ex. 75
27. Receipts of FSL Ex. 76 to 78
28. Receipt of FSL Ex. 79
29. Letters of FSL Ex. 80 to 82
30. Report given by Scientific Officer about the scene of offence place Ex. 83, 84
31. Yadi to Executive Magistrate Ex. 85 to 87
32. Yadi to Doctor for PM Ex. 88
33. Letter to Chief Officer, Mehsana Ex. 89
34. Letter to FSL by Dy. S.P. Ex. 90
35. Janvajog entry by Mehsana Police of missing persons Ex. 91
36. FSL Report Ex. 92 to 97

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 4.10.2010 held the present appellant- original accused guilty of the charge levelled against him under sec. 201 and 302 of IPC and convicted and sentenced the appellant-accused, as stated above.

4. We have heard learned advocate Mr. Tejas Barot for the present appellant and Ms CM Shah learned APP for the respondent-State.

5. Mr. Barot 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 APP 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. Ms. Shah has placed reliance on the decision of the Apex Court in the case of Babu @ Balasubramaniam and Another Vs. The State of Tamil Nadu, and submitted that in view of the evidence on record, this 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 husband who has killed his wife and daughter. The gruesomeness with which the husband has done his wife and daughter to death is borne out from the medical evidence and the evidence of PW-12 Haribhai Manilal Bhangi Ex. 35 who has taken out the dead-body of the deceased. The accused has killed his wife in a most cruel manner. From the evidence on record, it is established that the appellant has committed the murder of his wife and daughter is nothing but premeditated, motivated, intentional and with knowledge. Mr. Barot learned advocate for the appellant has taken us through the impugned judgment and order of conviction and sentence passed by the learned trial Judge. Ms. Shah learned APP has contended that this is not a case that even the benefit of doubt or any kind of leniency can be shown. The evidence of PW-12 Haribhai Manilal Bhangi Ex. 35 and medical evidence will not permit us to take any view other than that taken by the learned trial Judge.

8. The inquest panchnama, medical evidence and the postmortem report do not persuade us to take a different view than the view taken by the learned trial Judge. The clinching evidence proves that it was the accused and the accused alone was the perpetrator of the homicidal death and we concur with the learned trial Judge by holding the accused guilty for committing murder of his wife Rukhiben and daughter Disha.

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 u/s 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. 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.

10. PW-6 Kanubhai Somabhai Prajapati Ex. 25, who is the father of the appellant-accused. He was present when dead-body of deceased Rukhiben was taken out. He has identified the dead-body of deceased Rukhiben and has fully supported the case of the prosecution. PW-9 Jitendrakumar Manilal Patel Ex. 30, in his deposition he has mentioned that deceased Rukhiben did not come to Bharuch but because of the say of accused, he had given a wrong statement to the parents of deceased Rukhiben that she along with her daughter had come to

Bharuch. His evidence is natural. He also supported the case of the prosecution. Section 27 panchnama and panchnama Ex. 68 are proved by the evidence of PW-7 Rameshbhai Ishvarbhai Prajapati Ex. 26 and PW-8 Chaturbhai Mahadevbhai Prajapati Ex. 27 in whose presence the skull and other belongings of deceased Disha were recovered which were identified by these witnesses. The inquest panchnama is also proved by the panch witnesses. From the above evidence of the witnesses, the prosecution has proved its case beyond any 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.

12. In the result, this appeal is dismissed. The impugned judgment and order of conviction and sentence dated 4.10.2010 passed by the learned Addl. Sessions Judge, Fast Track Court No. 2, Mehsana in Sessions Case No. 1/2010 is confirmed. However, looking to the age of the appellant-accused at the time of commission of the offence, on completion of 14 years incarceration, the State Government may consider his case of remission, set-off and premature release. The proceedings taken therewith for his absconding, shall run consecutively and not concurrently.

R & P to be sent back to the trial Court forthwith.