

(2016) 01 GUJ CK 0127
In the Gujarat High Court

Case No : Criminal Appeal Nos. 297, 379, 559 and 560 of 1998

Dinesh Kantilal Panchal

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 19-01-2016

Acts Referred:

Bombay Police Act, 1951 — Section 135, Section 135(1)
Criminal Procedure Code, 1973 (CrPC) — Section 313, Section 357
Penal Code, 1860 (IPC) — Section 114, Section 302, Section 304, Section 323, Section 324, Section 34, Section 452, Se

Citation : (2016) 01 GUJ CK 0127

Hon'ble Judges : K.S. Jhaveri and R.P. Dholaria, JJ.

Bench : Division Bench

Advocate : M.M. Tirmizi, Advocate, for the Appellant; L.R. Pujari, Addl. Public Prosecutor, for the Respondent

Final Decision : Disposed off

Judgement

K.S. Jhaveri, J.—1. Earlier, learned advocate Mr. B.M. Gupta used to appear in the matter on behalf of the accused. However, today, Mr. M.M. Tirmizi, learned advocate, stated at the Bar that he has received instructions to appear on behalf of the accused in all the appeals. He supplied a copy of the Death Certificate of original accused No. 4. The same is taken on record.

2. These appeals arise out of the same judgment and order and hence, are disposed of by this common judgment.

3. Challenge in these appeals is to the judgment and order passed by the learned Addl. Sessions Judge, Court No. 3, Ahmedabad in Sessions Case No. 305/1991 dated 31.03.1998 whereby, original accused No. 1 has been convicted for the offences punishable u/s. 304 Part-I, 454, 323 and 504 r/w. Section 34 IPC and Section 135(1) of Bombay Police Act. Whereas, original accused No. 2 to 4 were convicted for the offences punishable u/s. 452, 323 and 504 r/w. Section 34 IPC.

For conviction u/s. 304 Part-I r/w. Section 34 IPC, original accused No. 1 has been sentenced to undergo RI for seven years and fine of Rs. 1000/- and in default, RI for a further period of three months. For conviction u/s. 452, 323 & 504 r/w. Section 34 IPC, original accused No. 1 has been sentenced to undergo RI for one day each and fine of Rs. 500/- for each offence and in default, RI for a further period of seven days. For conviction u/s. 135 B.P. Act, original accused No. 1 has been sentenced to undergo RI for seven days and fine of Rs. 500/- and in default, RI for a further period of seven days.

For conviction u/s. 452, 323 & 504 r/w. Section 34 IPC, original accused No. 2 to 4 were sentenced to undergo RI for one day each for each offence and fine of Rs. 500/- each for each offence and in default, to undergo RI for a further period of seven days.

All the sentences were ordered to run concurrently. The sentence already undergone was given set-off.

4. Criminal Appeal No. 297/1998 has been preferred by original accused No. 1 whereas, Criminal Appeal No. 379/1998 has been preferred by original accused No. 2 to 4 against their conviction. Criminal Appeals No. 559/1998 & 560/1998 have been preferred by the State for enhancement of sentence.

5. The facts, in a nutshell, are as under;

On 21.07.1991, at around 1830 hrs., while Ajaykumar Chinubhai, the original complainant and his wife were making payment of Auto fare after returning from Kalol, they noticed that all the four accused were standing in the veranda of their house and were hurling abuses at Ketankumar Chinubhai Khamar, the brother of complainant. They, subsequently, began to assault Ketankumar. During that period, the original accused No. 1 took out a knife and inflicted a knife blow on the stomach region of Ketankumar. On account of the said assault, Ketankumar sustained severe injuries and he was rushed to Civil Hospital, Ahmedabad. Initially, a complaint u/s. 324 & 114 IPC was registered against the accused with Dariapur Police Station vide I-C.R. No. 79/1991. During the course of treatment, the injured passed away on 27.07.1991 and therefore, offence u/s. 302 IPC was added. Necessary investigation was carried out and statements of witnesses were recorded. At the end of investigation, charge-sheet was filed against the accused persons before the trial Court. However, being a sessions triable offence, the case was committed to Sessions Court and trial was initiated.

6. During the trial, the prosecution had examined the following witnesses;

7. The prosecution had also produced and relied upon several documentary evidence, particularly, the complaint at Exh. 29, panchnama of scene of offence at Exh. 69, discovery panchnama at Exh. 71, inquest panchnama at Exh. 60, FSL Report at Exh. 95 and Biology Report at Exh. 96.

8. At the end of trial, the Court below recorded further statement of accused u/s. 313 of Cr.P.C. and thereafter, passed the impugned judgment and order, which

has led to the filing of present appeals.

9. Mr. M.M. Tirmizi, learned counsel appearing for original accused No. 1, fairly conceded that he would not be in a position to assail the impugned judgment on merits insofar as the findings of the Court below regarding presence and role played by original accused No. 1 are concerned. He, however, submitted that conviction of original accused No. 1 u/s. 304 Part-I IPC is illegal and erroneous in view of the fact that deceased died on account of septicemia arising out of medical complications. He submitted that deceased died on account of injuries sustained from a single knife blow and therefore, the conviction deserves to be altered to one u/s. 304 Part-II IPC considering the medical evidence on record.

10. Mr. L.R. Pujari, learned APP, took us through the evidence of complainant and other witnesses. He submitted that the evidence on record proves the presence and role played by the accused persons beyond reasonable doubt. However, the Court below committed serious error in acquitting them of the charge u/s. 302 r/w. Section 34 IPC. He further submitted that the sentence imposed upon original accused No. 1 to 3 are on the lower side and it deserves to be enhanced. Hence, the appeals preferred by the State deserve to be allowed.

11. We have heard learned counsel for both the sides and perused the documents on record. The prosecution had examined Dr. Vinayakrao Patil (PW-5), who had performed the autopsy. From the medical evidence, it is established that the deceased died on account of a single stab injury on the stomach, which resulted into peritonitis. The post-mortem report states in detail the nature of injury and cause of death. The Medical Officer categorically opined that the stab injury was possible with muddamal weapon knife. Thus, the medical evidence on record establish beyond doubt that the deceased died on account of a single stab injury, which resulted into peritonitis.

12. The prosecution has examined complainant, Ajaykumar Chinubhai (PW-1) and his father - Chinulal Chandulal (PW-4). Both these witnesses are eye-witness to the incident in question. The incident in question took place in the house of the complainant and therefore, the presence of these two witnesses at the scene of offence is natural and cannot be doubted. Further, the accused were residing in the neighbourhood and therefore, there cannot be any error in identifying the assailants nor it is the case of defence that the accused and complainant side were not known to each other. Both these witnesses were cross-examined at length. However, nothing incriminating has come out, as would render their evidence unreliable or non-trustworthy.

13. Considering the oral evidence on record, we find that it was original accused No. 1 who was the main assailant. Original accused No. 1 chased down the deceased and thereafter, inflicted a single knife blow on the stomach region of the body of deceased. No covert act is attributed to accused No. 2 to 4 except the averment that they were hurling verbal abuses. The complaint (Exh. 29) given by the deceased in Civil Hospital, Ahmedabad and the testimony of

Investigating Officer - Jayantilal Panchal (PW-6) support the story narrated by the aforesaid two witnesses. Considering the aforesaid aspect of the case, we believe that the conviction of accused No. 2 to 4 u/s. 452, 323 & 504 r/w. Section 34 IPC is illegal and erroneous and it deserves to be quashed and set aside.

14. However, insofar as the role played by original accused No. 1 is concerned, it is established from the record that he had inflicted a single knife blow on the stomach region of deceased, which, ultimately, resulted into his death. However, considering the medical evidence on record, wherein, the Doctor has categorically opined that death was caused on account of septicemia, we are of the view that conviction of original accused No. 1 u/s. 304 Part-I IPC is erroneous and instead, the conviction ought to have been u/s. 304 Part-II IPC since the deceased died on account of a single stab injury. In our opinion, in the facts and circumstances of the case, it would be appropriate to impose sentence of RI for five years for conviction u/s. 304 Part-II IPC.

15. At this stage, learned counsel Mr. Tirmizi requested to grant benefit of the judgment of Apex Court in the case of Ankush Shivaji Gaikwad v. State of Maharashtra, , 2013 (6) SCC 770 to original accused No. 1. Considering the facts and circumstances of the case, we are inclined to grant benefit of the said judgment to original accused No. 1 for reasons discussed herein above.

16. For reasons recorded in the common judgment delivered today, the following order is passed;

"(A) Both Criminal Appeals No. 559/1998 & 560/1998 preferred by the State stands dismissed. Whereas, Criminal Appeal No. 559/1998 stands abated qua original accused No. 4. Bail Bonds stand cancelled.

(B) Criminal Appeal No. 297/1998 preferred by original accused No. 1 is partly allowed;

(I) The impugned judgment and order dated 31.03.1998 passed in Sessions Case No. 305/1991 is modified to the extent that conviction of original accused No. 1 u/s. 304 Part-I IPC is altered to one u/s. 304 Part-II IPC and original accused No. 1 is sentenced to undergo imprisonment for five years and fine of Rs. 1000/- and in default, RI for a further period of three months. The conviction and sentence of original accused No. 1 u/s. 452, 323 & 504 IPC and Section 135 B.P. Act stands confirmed. Rest of the impugned judgment and order stands confirmed qua original accused No. 1.

(II) Considering the principle rendered by the Apex Court in Ankush Shivaji Gaikwad v. State of Maharashtra, , 2013 (6) SCC 770 and the request made by learned counsel Mr. Tirmizi that accused No. 1 is ready to pay a sum of Rs. 1.50 Lacs to the complainant under the provisions of Section 357 Cr.P.C., we do not find any reasons in the facts and circumstances of the case for denying benefit of the judgment to original accused No. 1.

(III) Accordingly, while granting benefit of the judgment rendered in Ankush Shivaji Gaikwad's case (supra) to original accused No. 1, it is directed that if original accused No. 1 deposits a sum of Rs. 1.50 lacs before the Registry of concerned Sessions Court, within a period of TEN WEEKS from today, which, in turn, shall be paid as compensation to the complainant, then accused No. 1 is not required to undergo the remainder sentence for conviction u/s. 304 Part-II IPC, as modified by this Court.

(IV) On such deposit being made, the Registry of concerned Sessions Court shall pay the entire amount to the complainant, after due verification. It is clarified that if original accused No. 1 fails to deposit the amount as aforesaid, then he shall surrender to custody on expiry of the period of Ten Weeks failing which the investigating agency shall take necessary steps for sending him to jail custody. The impugned judgment and order stands modified accordingly qua original accused No. 1.

(C) Criminal Appeal No. 379/1998 is allowed qua original accused No. 2 & 3 and it stands abated qua original accused No. 4. Both original accused No. 2 & 3 are acquitted of the charges framed against them and they are ordered to be set at liberty forthwith, if they are not required in connection with any other case. They are on bail and hence, their bail bonds stand cancelled.

(D) All the appeals stand disposed of accordingly. R & P, if lying here, be transmitted to the Court below forthwith.