
(2016) 04 GUJ CK 0044
In the Gujarat High Court
Case No : Criminal Appeal No. 600 of 2011

Gandabhai Raghubhai Nirashrit Thakor	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 07-04-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, Section 304

Citation : (2016) 04 GUJ CK 0044

Hon'ble Judges : K.S. Jhaveri and Biren Vaishnav, JJ.

Bench : Division Bench

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

Final Decision : Partly Allowed

Judgement

K.S. Jhaveri, J.—1. This appeal is preferred against the judgment and order dated 21.11.2009 passed by learned Additional Sessions Judge, Fast Track Court No. 2, Patan in Sessions Case No. 78 of 2008, whereby the accused was held guilty for offence punishable under Section 302 of the Indian Penal Code (for short, "IPC") and ordered to undergo imprisonment for life and to pay fine of Rs. 1,000/- and, in default of payment of fine, the accused was ordered to undergo further simple imprisonment for six months.

2. The facts in brief giving rise to the filing of present appeal are as under:--

"2.1 It is the case of the prosecution that on 31.12.2008, in the evening at about 7 p.m. the accused went to the house of the victim, Dahyabhai Devshibhai Thakor for calling him. Then the accused and the victim went away and about 4 a.m. in the morning, the accused came with the deceased carrying him on his shoulder. As the wife of the deceased asked the accused the reason for doing so, he told that the deceased had consumed liquor and allow him to sleep for some time. Thereafter, the accused put the deceased down on the bed and went away. When wife of the deceased tried to awake him, she saw wound on his cheek and

head from which blood was oozing out. Then the wife of the deceased informed it to the complainant. With these allegations, a complaint came to be filed against the accused.

2.2 On complaint being filed, investigation was carried out and the accused came to be arrested. At the end of investigation, charge-sheet was filed against the accused before the Magistrate Court. Since the offence was exclusively triable by the Court of sessions, the case was committed to Sessions Court and, ultimately, trial was initiated and charge came to be framed. The accused pleaded not guilty and claimed to be tried.

2.3 During the trial, the prosecution had examined following witnesses:--

2.4 The prosecution had also produced and relied upon following documentary evidence:--

2.5 At the end of trial, the Court below recorded further statement of the accused under Section 313 of Cr.P.C. and thereafter, passed the impugned judgment and order. Being aggrieved and dissatisfied with the impugned judgment of the trial Court, present appeal is preferred before this Court."

3. At the time of hearing of this appeal, Mr. Tejas Satta, learned advocate for the appellant-original accused has taken us through the evidence and tried to establish that the prosecution has miserably failed to prove its case against the appellant. He submitted that there is no eye witness to the incident. He also submitted that there is no substantive piece of evidence connecting the accused with the offence. He submitted that the present case is based on circumstantial evidence and the prosecution has failed to complete the chain, therefore, the accused is wrongly convicted by the trial Court. However, after arguing the matter at some length, he fairly conceded that in view of the medical evidence and statements of other witnesses, though the offence against the accused can be said to have been proved, he is arguing only on the quantum of punishment. He submitted that there was no motive on the part of the accused to commit the offence and there was no pre-planning. He submitted that even if the case of the prosecution is believed, it has failed to prove any intention on the part of the accused. He, therefore, submitted that the trial Court has committed an error in convicting the accused for offence punishable under Section 302 of IPC and at the most it would fall under Section 304, Part-I of IPC. He submitted that considering all these circumstances, offence alleged against the accused may be converted to Section 304, Part-I from that of Section 302 of IPC.

4. On the other hand, Ms. C.M. Shah, learned APP appearing for the State has submitted that the order of conviction recorded against the appellant-accused is just and proper and she has supported the conviction recorded by impugned judgment. Learned APP has contended that taking into consideration the medical evidence, evidence of the complainant and other witnesses, the view taken by the trial Court is just and proper and no interference is called for by this Court. She submitted that in view of evidence of PW-7 and PW-8, it is established that

the accused was lastly seen with the deceased. She further submitted that even the report of FSL supports the case of the prosecution. She, therefore, submitted that the learned trial Judge has not committed any error while imposing the sentence on the accused and no interference is called for in the present appeal.

5. We have heard Mr. Tejas Satta, learned advocate for the appellant-original accused and Ms. C.M. Shah, learned APP for the State. We have also gone through the impugned judgment as well as evidence on record. We have gone through the postmortem report of the deceased. The reason for death is stated to be cardio-respiratory arrest due to haematoma and injuries to brain. Therefore, this is a case of unnatural death. However, since learned advocate for the accused has argued the matter only on the quantum of punishment, we are not discussing the evidence in detail and we have considered the matter only this limited point. We are now required to consider the submission of learned advocate for the accused as to whether the offence falls within Section 302 or 304, Part-I of IPC. As per column No. 17 of the postmortem report, there were three injuries on the body of the deceased and there were two corresponding internal injuries to these injuries. However, in his cross-examination, PW-1, Dr. Paresh Kanaiyalal Kadiya, has stated that injury Nos. 1 and 3 are possible if a person, who has consumed liquor, falls on the hard and blunt substance. From the evidence of Chakuben Dayalji bhai, widow of the deceased, PW-7, it is clear that on the date of the incident the accused took her husband away and in the morning at about 4 a.m., the accused brought the deceased by carrying him on his shoulder. It is also stated by her that the accused told her that the deceased has consumed more liquor and let him sleep for two hours. She further stated that when she tried to wake up her husband, she had seen that the blood was coming out of his head, therefore, she called her relatives. Even PW-8, Jamnaben Dahyabhai Thakore has stated in her statement that she had seen the accused and the deceased together in the previous evening at 7 p.m. when she was coming back from her labour work. She also asked the accused as to where they were going and the accused replied that they are going out. Therefore, it is clear that the accused was lastly seen with the deceased. Even the FSL report supports the case of the prosecution. Not only that the conduct of the accused of bringing the deceased back home on his shoulder and asking the wife of the deceased to let him sleep also points towards the guilt of the accused. Therefore, the trial Court has not committed any error in convicting the accused, however, the prosecution has failed to prove the motive behind the incident and it cannot be said that the offence was committed with pre-planning. In our view, therefore, it can be said that the accused is guilty of offence under Section 304, Part I of IPC and not for the offence under Section 302 of IPC. Accordingly, this Criminal Appeal is required to be allowed by holding the accused guilty for offence under Section 304, Part I of IPC and not for offence under Section 302 of IPC and sentence imposed upon him is required to be reduced to ten rigorous years imprisonment instead of life imprisonment.

6. For the foregoing reasons, this Criminal Appeal is partly allowed. The

impugned judgment and order dated 21.11.2009 passed by learned Additional Sessions Judge, Fast Track Court No. 2, Patan in Sessions Case No. 78 of 2008 is modified and instead of offence punishable under Section 302 of IPC, the appellant-original accused is held guilty for the offence punishable under Section 304, Part-I of IPC and ordered to undergo ten years" rigorous imprisonment. The period of sentence already undergone by the accused be given set off to him. Remaining part of the impugned judgment shall remain unaltered. Bail bond, if any, stands cancelled. Record and Proceedings be sent back to the concerned trial Court forthwith.