

(2008) 08 GUJ CK 0045
In the Gujarat High Court
Case No : Criminal Appeal No. 916 of 2000

Gordhanbhai Mathurbhai Vasava

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 06-08-2008

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 313, 374
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 302, 304, 325

Citation : (2008) 08 GUJ CK 0045

Hon'ble Judges : Z.K. Saiyed, J; A.M. Kapadia, J

Bench : Division Bench

Advocate : Sadhana Sagar, appointed by Legal Aid Committee, for the Appellant; Mukesh Patel, APP, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Kapadia, J.—Sole appellant ("the accused" for short) was charged and tried by the learned Additional Sessions Judge, Vadodara ("the trial Court" for short) for the offence punishable u/s 302 of the Indian Penal Code ("IPC" for short) and u/s 135 of the Bombay Police Act ("BP Act" for short) in Sessions Case No. 41 of 2000 on the accusation that he has committed murder of his sister-in-law Nankiben, in a very petty and trifle dispute of not lending money by her to him. At the end of the trial, the accused was found guilty of the offences with which he was charged and, therefore, the trial court vide judgment and order dated 14.9.2000 convicted him for the said offences and sentenced to imprisonment for life and fine of Rs. 1,000/- i.d., RI for six months for the offence u/s 302 IPC and RI for three months and fine of Rs. 100/- i.d., RI for ten days for the offence u/s 135 of the BP Act.

1.1. Aggrieved thereby the accused has filed this appeal u/s 374 of the Code of Criminal Procedure ("the Code" for short) through jail authority.

2. The prosecution case as disclosed from the telephone vardhi received by P.W.10, Kantibhai Balabhai Rathwa, ASI, Karjan Police Station and unfolded during trial is as under:

2.1. Kesrisinh Samantsinh, ASI, Buckle No. 1016, serving at Raopura Police Station, Vadodara City was on duty at Government Hospital, received a vardhi at 4.15 P.M., from CMO Smt. Pravinaben Thakkar to the effect that one woman named Nankiben, wife of Budhabhai Ramanbhai Vasava, aged 35 years, occupation labour work, residing at Nishaliya, Taluka Karjan, District Vadodara, had exchange of words on that day with Gordhanbhai Mathurbhai Vasava at 13.45 hours when she was doing labour work in the field of Kantibhai Ambalal Patel. The said woman was injured with a wooden log at face, head and chest and she was brought for treatment and was under treatment at that time. Her condition was serious. The said telephone vardhi is at Ex.23. The said vardhi was registered by P.W.10, Kantibhai Balabhai Rathwa, ASI of Karjan Police Station, vide CR No. 229 of 1999 for commission of the offence u/s 325 IPC. During the course of treatment, Nankiben died in SSG Hospital, Vadodara, therefore, offence of Section 302 was added.

2.2. Thereafter PW 13, Amrutlal Ramjibhai Chaudhari, PSI took over the case and started investigation. He went to SSG Hospital, Vadodara and held inquest on the dead body of Nankiben, sent the dead body for post mortem examination and recorded statements of witnesses.

2.3. After that the investigation was transferred to P.W.14, Moinuddin Sirajuddin Shaikh, who has drawn panchnama of the scene of offence, collected sample earth and control earth from the place of offence, arrested the accused in presence of panchas and recovered clothes worn by the accused which was stained with blood. During the course of the investigation, the accused has shown his willingness to show the wooden log used for commission of the offence and on the basis of the willingness shown by the accused, he has recovered the wooden log stained with blood from the place which was shown by the accused in presence of panchas and drawn discovery panchnama as per Section 27 of the Evidence Act. He thereafter sent the muddamal clothes as well as the wooden log having blood stains to FSL for chemical analysis.

2.4. On receipt of the post mortem report as well as FSL report and as sufficient incriminating evidence was found against the accused, he filed charge sheet against the accused in the Court of learned JMFC, Karjan.

2.5. As the offence u/s 302 IPC is exclusively triable by a Court of Sessions, the learned JMFC, Karjan committed the case to the Sessions Court, Vadodara.

2.6. The learned Additional Sessions Judge, Vadodara to whom the case was made over for trial, framed the charge against the accused. The accused pleaded not guilty to the charge and claimed to be tried and thereupon he was put to trial by the trial court in Sessions Case No. 41 of 2000.

2.7. To prove the culpability of the accused, the prosecution has examined 14 witnesses consisting of the complainant - husband of the deceased, eye witnesses, panch witnesses and investigating officer and relied upon their oral testimonies.

2.8. To prove the case against the accused, the prosecution has also produced a number of documents such as complaint, post-mortem report, FSL report, discovery panchnama, etc., and relied upon the contents thereof.

2.9. After recording of the evidence of the prosecution witnesses was over, the trial Court explained to the accused the circumstances appearing against him and recorded his further statement u/s 313 of the Code. In his further statement, the accused denied the case of the prosecution in its entirety. He has stated that a false and concocted case has been filed against him. However, he has neither led any evidence nor did he examine any witness in support of his defence.

2.10. On appreciation, evaluation, analysis and scrutiny of the evidence on record, the trial Court came to the conclusion that Nankiben has died a homicidal death and the accused is the author of the injuries caused to the deceased with wooden log. Therefore the prosecution has successfully established the complicity of the accused for commission of murder of Nankiben. On the aforesaid finding, the trial court convicted the accused for the offence u/s 302 IPC and Section 135 of the BP Act and he has been sentenced accordingly to which reference is made in the earlier paragraphs of this judgment, which has given rise to instant appeal at the instance of original accused.

3. Ms. Sadhna Sagar, learned advocate for the accused appointed by the Legal Aid Committee for the accused, has fairly conceded that deceased Nankiben has died a homicidal death. She has also conceded that the accused is the author of the injuries caused to the deceased. She has contended that there is inconsistency in the testimonies of eye witnesses and the medical evidence. Eye witnesses say that only a single blow was given by the accused whereas medical evidence shows five injuries on the dead body of Nankiben. According to her only one blow was given on the head of Nankiben by the accused and therefore the offence does not amount to murder but it amounts to culpable homicide not amounting to murder. According to her, there was no intention on the part of the accused to commit murder of Nankiben who is his sister-in-law. The incident had taken place on a trifle and petty matter. The accused demanded money which Nankiben refused to lend and therefore the accused suddenly got excited and inflicted a single blow with a wooden log and thereafter he ran away and he has not acted cruelly or in an unusual manner and has also not taken undue advantage. Therefore, offence is not murder but it is culpable homicide not amounting to murder punishable u/s 304 Part I or II IPC. The accused has undergone imprisonment of seven years and since the offence committed by the accused is u/s 304 Part I or II IPC, the custodial sentence undergone by him may be treated as substantive sentence. She therefore urged to allow the appeal partly qua sentence only and appropriate order in this connection may be passed.

4. Per contra, Mr. Mukesh Patel, learned APP for the respondent - State of Gujarat has submitted that there is no infirmity or illegality committed by the trial Court in recording the conviction and sentence against the accused. Therefore, no interference is called for in the impugned judgment and order. According to him, the accused has committed the crime in a cruel and unusual manner and he has taken undue advantage of the situation. The deceased had not given sudden provocation. The deceased simply refused to lend money and thereupon the accused has inflicted multiple injuries on the face, head and chest of the deceased. Therefore, it is a clear-cut case of murder and not an offence of culpable homicide not amounting to murder. Therefore, complicity of the accused for the offence u/s 302 IPC has been duly proved. According to him, there are eye witnesses to the incident who have no reason to falsely rope in the accused in the crime. Therefore, he urged to dismiss the appeal by confirming the judgment and order of conviction and sentence recorded against the accused by the trial court.

5. This Court has considered the submissions advanced by Ms. Sadhna Sagar, learned advocate for the accused and Mr. Mukesh Patel, learned APP for the respondent - State of Gujarat and perused the impugned judgment and order. This Court has undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record, which is read and re-read by the learned advocates of the parties with reference to broad and reasonable probabilities of the case. This Court has examined the entire evidence on record for itself independently of the learned Judge of the trial Court and considered the arguments advanced on behalf of the accused and infirmities pressed, scrupulously with a view to find out as to whether the trial Court has rightly recorded the order of conviction and sentence.

6. There is no dispute to the fact that the deceased has died a homicidal death. Even the learned advocate for the accused has not raised any dispute in this regard. To prove this fact, the prosecution has examined P.W.11, Dr. Vijaysinh Ganpatsinhji Rathod, Tutor, SSG Hospital, Vadodara, who performed post mortem examination on the dead body of Nankiben, at Ex.26. The post mortem report is at Ex.27.

6.1. On a conjoint reading of the oral testimony of P.W.11, Dr. Vijaysinh Ganpatsinhji Rathod, Ex.26 and the post mortem report at Ex.27, it is seen that there were five external injuries and five internal injuries on the dead body of Nankiben which were on vital parts of the body i.e., head, face and chest. The deceased died due to cranio-cerebral trauma and its complications.

6.2. In view of the aforesaid evidence, according to us, the prosecution has established that Nankiben has died a homicidal death. We are, therefore, of the opinion that the trial court has rightly held that Nankiben has died a homicidal death and, therefore, we confirm the said finding and hold that the deceased has died a homicidal death.

7. Now the next question is whether the accused is the author of injuries caused to deceased Nankiben.

7.1. It is not disputed by Ms. Sadhna Sagar, learned advocate for the accused that the accused has inflicted one blow with a wooden log to the deceased. However, for our satisfaction, we have examined the evidence independently.

7.2. To prove this fact, the prosecution has examined and relied upon the oral testimony of P.W.1, Budhabhai Ramanbhai Vasava, husband of deceased Nankiben at Ex.7. He has testified that he was informed by Kalidas that Gordhan i.e., the accused has inflicted injury to Nanki and ran away. He therefore went there and saw his wife Nankiben lying in the field and her head was burst and she was serious and therefore she was shifted in a bullock cart and thereafter shifted her to SSG Hospital in a jeep.

7.3. The prosecution thereafter has examined P.W.2, Kantibhai A. Patel, who is the owner of the agricultural field in whose field the said offence has taken place, at Ex.8. He was informed by Kalidas about the incident.

7.4. Both the above witnesses were cross-examined by the learned advocate for the accused but nothing substantial could be brought out which would impeach the credibility of their evidence.

7.5. Thereafter the prosecution has examined and relied upon the evidence of P.W.3, Kailashben Manubhai Vasava, Ex.11. She is projected as an eye witness. She has inter alia testified that at the time of incident she was plucking cotton from the field. Nankiben was feeding her child. At that time Gordhan came there and inflicted injury on the head of Nankiben with a wooden log. Nankiben fell down in the field and the accused ran away.

7.6. The prosecution has thereafter examined and relied upon the oral testimony of P.W.4, Kailasben Mangalbai Vasava, Ex.12. She is also projected as an eye witness. She has deposed in terms of the testimony of P.W.3, Kailasben Manubhai Vasava. She has also deposed that on the day of the incident Nankiben was in the field along with her and she was feeding her child. At that time the accused came there and demanded money from her but as she had no money the accused has inflicted blow with a wooden log on her head.

7.7. The prosecution has thereafter examined P.W.5, Kalidasbhai Chhotabhai Baria, who has informed about the incident to P.W.1, husband of the deceased, at Ex.13. He was also working at the field of Kantibhai Patel on the day of the incident. Nankiben was also working in the field and she was feeding her child. He saw the accused running away after beating Nankiben from a distance.

7.8. P.W. 3, P.W.4, and P.W.5 have been cross-examined at length by the learned advocate for the accused. However, nothing substantial could be brought out which would impeach the credibility of their evidence. There is no reason to disbelieve the say of the eye witnesses and there is no reason for them to falsely rope the accused in the crime.

8. It is settled position of law that evidence of solitary eye witness is sufficient to base order of conviction. In this connection, it would be appropriate to refer to the following two decisions of the Supreme Court:

8.1. In the case of Kunju @ Balachandran Vs. State of Tamil Nadu, , the Supreme Court has held that conviction on the basis of the testimony of the sole eyewitness is permissible where the testimony of sole eyewitness was not shaken although he was cross-examined at length and the same was corroborated by the evidence of another witness who did not support the prosecution version in toto.

8.2. In the case of Krishna Mochi and Others Vs. State of Bihar, , the Supreme Court has held that credible evidence of even a solitary witness can form the basis of conviction.

9. The prosecution has successfully established the complicity of the accused in commission of offence of murder of deceased Nankiben from the testimonies of the above witnesses. There is one more piece of evidence i.e., discovery panchnama of the wooden log used by the accused at the time of commission of the offence at the instance of the accused.

9.1. In this connection the prosecution has examined and relied upon the oral testimony of P.W.8, Sajanbhai Rudabhai Bharwad, Ex.20. He is a panch to the discovery panchnama i.e., wooden log which was recovered at the instance of the accused. He has supported the prosecution case and has narrated the incident as per the panchnama Ex.21. By this panchnama blood stained wooden log was recovered at the instance of the accused.

9.2. The prosecution has examined and relied upon P.W.12, Pravinbhai Chhaganbhai Parmar, Ex.29. He is a panch witness to the panchnama of recovery of clothes of the accused. He has testified that in his presence the clothes of the accused were recovered which were having blood stains. The said panchnama is at Ex.30.

9.3. From the above evidence of two panch witnesses it is clear that the wooden log used in commission of the offence which was stained with blood was recovered at the instance of the accused as well as clothes put on by the accused at the relevant time stained with blood were also recovered.

9.4. In this connection, it would be appropriate to refer to FSL report which is on record at Ex.40. A perusal of the said report it is clear that on all the articles i.e., on the control earth, sari and petticoat of the deceased Nankiben, pant of the accused and wooden log, all were stained with blood of A group and the blood group of deceased Nankiben was of A group and therefore there is no reason to disbelieve that the accused has with the wooden log inflicted injuries on the vital parts of the deceased. Finding of blood of A group on the above referred to articles as well as the deceased was having blood group A is sufficient to establish that the accused had with a wooden log inflicted injuries on vital parts

of the deceased. Therefore on all the above referred articles blood of A group was found. Therefore from the aforesaid evidence also it is duly established that the accused is the author of the injuries caused to the deceased.

10. Now the next question which is required to be answered by us is whether the offence committed by the accused falls within the definition of murder or it is culpable homicide not amounting to murder.

10.1. On careful consideration of the overall evidence, it is clear that the deceased has not provoked the accused. The deceased has simply refused to lend money to him. It has also come in evidence that the accused was demanding money from the deceased frequently. The accused has also demanded money prior to three days from the deceased but she refused to lend the same. Moreover, on the previous day also there was quarrel between the deceased and the accused and therefore the accused has inflicted injuries on the vital parts of the deceased. Therefore, the offence committed by he accused does not fall within any of the exceptions and it is a clear-cut case of murder and the accused was minded to kill her as she refused to lend money to him and therefore the submission of Ms. Sadhna Sagar that the offence committed by the accused is not an offence of murder but it amounts to culpable homicide not amounting to murder, cannot be accepted and deserves to be rejected.

11. There is oral testimony of the eye witnesses who saw the accused giving fatal blows with the wooden log to the deceased. There is evidence of panch witnesses of the panchnama with respect to recovery of clothes as well as wooden log. Though the evidence of eye witnesses do not require corroboration, the prosecution has produced corroborative piece of evidence in the form of discovery and recovery panchnama of weapon used by the accused as well as the recovery of clothes put on by the accused and the deceased at the relevant time and the FSL report in terms proves that the accused has committed the offence of murder of Nankiben.

12. In view of the clinching and satisfactory evidence of the prosecution witnesses, complicity of the accused in commission of the offence of murder of Nankiben has been duly established. Suffice it to say that the trial Court has given cogent and convincing reason for convicting the accused for commission of offences u/s 302 IPC and Section 135BP Act and Ms. Sadhna Sagar, learned advocate for the accused could not dislodge the said reasons given by the trial Court.

13. We find ourselves in complete agreement with the finding, ultimate conclusion and the resultant order of conviction and sentence recorded by the trial Court, as according to us, no other finding, conclusion and order, is possible except the one reached by the trial Court, which is required to be affirmed by us.

14. Seen in the above context, there is no reason or justifiable ground to interfere with the impugned judgment and order of conviction and sentence passed by the trial Court, and as the appeal lacks merit, it deserves to be

dismissed by confirming the judgment and order passed by the trial Court.

15. For the foregoing reasons, the appeal fails and accordingly it is dismissed. Resultantly, the judgment and order of conviction and sentence dated 14.9.2000 rendered in Sessions Case No. 41 of 2000 by the learned Additional Sessions Judge, Vadodara, is hereby confirmed and maintained.