

(2008) 08 GUJ CK 0069
In the Gujarat High Court
Case No : Criminal Appeal No. 1363 of 2004

Gulal Zimmaria Rathva

APPELLANT

Vs

The State of Gujarat

RESPONDENT

Date of Decision : 04-08-2008

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 157, 313, 374, 428
Penal Code, 1860 (IPC) — Section 302, 304(2), 323, 504

Citation : (2008) 08 GUJ CK 0069

Hon'ble Judges : M.B. Shah, J

Bench : Single Bench

Advocate : J.M. Buddhbhatti, for the Appellant; U.R. Bhatt, APP, for the Respondent

Judgement

M.D. Shah, J.—Heard learned advocate Mr. J.M. Buddhbhatti who is appearing as amicus curiae for the appellant-accused and learned APP Mr. U.R. Bhatt for the opponent-State.

2. By way of filing this appeal u/s 374 of the Cr.PC, the appellant has challenged the judgment and order of conviction and sentence dated 25.6.2004 passed by the learned Addl. Sessions Judge & 4th Fast Track Judge, Fast Track Court, Chhota-udepur, against the appellant for the offence punishable u/s 304(2) of IPC in Criminal Case No. 77 of 2003 convicting and sentencing him to undergo rigorous imprisonment of seven years and to pay fine of Rs. 1,000/-, in default, to further undergo rigorous imprisonment of two months. The appellant was however, acquitted for the offences punishable under Sections 302 323 and 504 of IPC and Section 135 of the Bombay Police Act. He was also given the benefit of set-off u/s 428 of Cr.PC.

3. The case of the prosecution is that, the complainant Lakhiben, now widow of deceased Keslabhai Rathwa was residing at village Chichaba, Taluka Kawant, Dist. Vadodara with her family. According to the prosecution, the incident took

place on 23.6.2003 at about 6.30 p.m. when the complainant was at her house. Her husband Keslabhai was standing in the open space nearby the house of the appellant, Gulalbai Zamariyabhai Rathwa. It is alleged that at that time, Gulalbai, appellant herein, asked the deceased Keslabhai, husband of the complainant as to why the entire crop of Ladies Finger from his land was collected instead of the crop from the portion of the deceased and the appellant accused to abuse him and the wife of the complainant restrained him from abusing and on saying so by the wife of complainant, the appellant accused got infuriated and went to his house and came with a SPaliya (Dinga) and inflicted a blow with the blunt portion of the S Paliya on the head of the deceased. She immediately snatched away the weapon from the appellant-accused and thereafter, along with her husband, she went to Kawant Police Station where she lodged the complaint. On the basis of the said complaint, the offence was registered as Kawant Police Station C.R. No. II-43 of 2003 for the offences punishable under Sections 323 and 504 of IPC and u/s 135 of the Bombay Police Act. On 24.6.2003, the injured died at SSG Hospital during treatment and therefore, Section 302 of IPC was added and the report u/s 157 of Cr.PC was submitted before the Court. During the investigation, statements of witnesses were recorded, Inquest panchnama, panchnama of scene of offence and panchnama of recovery of clothes as well as weapons were drawn; sample of blood from the soil was collected and the muddamal items were sent to the Forensic Science Laboratory (FSL) for analysis. It is the prosecution case that the complaint Exh.36 was also recorded and the offence was registered. The accused was also sent to hospital for treatment. At the end of investigation, the charge sheet was filed as referred to above. Since the court of learned JMFC has no jurisdiction to try the case, it was committed to the Court of Sessions which was numbered as Sessions Case No. 77 of 2003.

4. The Charge was framed at Exh.4 against the present appellant-accused for the offences punishable under Sections 302 323 and 504 of IPC and Section 135 of the Bombay Police Act. The appellant-accused denied the charges and claimed to be tried.

5. The further statement of the accused u/s 313 of Cr.PC was recorded wherein also, the appellant accused submitted that he has been falsely involved in committing the offence.

6. The prosecution has examined the following witnesses:

PW-1 Lekhiben Keslabhai - Exh.9

PW-2 Meeraben Keslabhai - Exh.10

PW-3 Vesalbai Amariyabhai Rathwa - Exh.11

PW-4 Dr. Rajkumar Indradev Tiwari - Exh.13

PW-5 Ranjanbhai Gordhanbhai - Exh.19

PW-6 Rupjibhai Udariyabhai Rathwa - Exh.23

PW-7 Natubhai Rataniyabhai Rathwa - Exh.24

PW-8 Dr. Ashok Krishnalal Mahajan - Exh.25

PW-9 Savjibhai Jerambhai Vakhariya - Exh.32

PW-10 Dr. Atulbhai Prabhakarabhai Gupte - Exh.44

7. The prosecution also relied upon the following documents:

1. Complaint of Lakhiben - Exh.33

2. Medical Certificate of Feslabhai - Exh.14

3. Vardhi of deceased Feslabhai - Exh.34

4. Wireless message for adding Section 302 Exh.42

5. Police Yadi for conducting inquest - Exh.35

6. Inquest Panchnama - Exh.28

7. Panchnama of scene of offence - Exh.21

8. Police Yadi for P.M. - Exh.27

9. P.M.Note - Exh.26

10. Panchnama of clothes on the dead body of deceased - Exh.29

11. Panchnama of Health condition of the accused - Exh.30

12. Recovery Panchnama of Paliya - Exh.38

13. Forwarding note - Exh.39

14. Receipt - Exh.40

15. F.S.L. Report - Exh.41

16. Medical Certificate of accused - Exh.16

17. Panchnama of place of offence - Exh.30

18. Panchnama of production of Paliya by Meeraben - Exh.22

19. Production of original F.I.R.(Accused)

20. F.I.R. - Complainant (Lakhiben)

8. The prosecution has examined PW-1-Lakhiben Keslabhai - Exh.9, who is wife of the deceased, and the complainant. She has deposed that she along with her husband were walking towards their house and she reached the house first. At that time, the appellant - accused inflicted blow on the head of her husband with Paliya and this incident was happened in front of the house of the appellant-

accused. The appellant's house is close to her house. She has deposed that the incident took place at about 6 O'Clock in the evening. There was no reason to inflict Paliya blow to her husband. Thereafter, she along with some other persons took her husband to Kawant Hospital. She has given the complaint about the incident at Kawant Police Station. From Kawant Hospital, her husband was shifted to SSG Hospital Vadodara for better treatment, accompanying him. She has stated that during the treatment, her husband expired. She has identified the appellant and the weapon used in the incident. In her cross examination, she has stated that at first instance, she took her husband in a SChakada directly to Kawant police station, where she has lodged the complaint. She has stated that in her presence, the police questioned her husband. She has further stated that she reached the Police Station at about 7 O'Clock in the evening and denied that they spent about one hour in the Police Station. Thereafter, she has taken her husband to the hospital and the Doctor on duty talked to her husband to which, her husband was giving answer. Thereafter her husband was taken in a Govt. vehicle to Vadodara and reached Vadodara at about 3 O'Clock in the early morning. She has further stated that there was no accident or anything happened during their travel from Kawant to Vadodara. The Doctor had talked to her husband, but he was not in a position to talk. The Doctor gave her husband the necessary treatment, but he expired on the next day at about 3 O'Clock in the afternoon. Her husband was not in a position to talk till then. The statement was taken by the police from her at about 6 O'Clock, after the death of her husband. She has denied that the appellant-accused had drunk and was in an inebriated condition at the time of incident. She has admitted that she has given the statement that on the day of incident at about 6 O'Clock, she was at her house and her husband was standing in the front side of the appellant's house, which is nearby her house. She has also admitted that it is true that she has written in the complaint before the police that at the time of incident, the appellant had asked him as to why the crop of Ladies Finger had been collected. She has stated that she has been watering Ladies Finger grown at the portion of her land only and not in the portion of the appellant.

9. I have heard learned advocate Buddhabhatti, who is appearing as amicus curiae, appointed through Legal Aid Committee, on behalf of the appellant-accused and learned APP Mr. U.R. Bhatt.

10. Learned advocate Mr. Budhhbhatti has taken this Court through the entire evidence on record and submitted that taking into consideration the cross complaint which is produced at Exh.36, the presence of the present appellant-accused was well established by the prosecution. He submitted that taking into consideration the complaint which is produced at Exh.33, it seems that a quarrel had taken place in connection with the collection of crop of Ladies Finger alone by the complainant's husband. As per the PM report also, which is produced as Exh.26, only one injury is found on the head of the deceased on the left-hand side temporal region and fracture was there. It has also come in evidence that, firstly, the injured along with his wife-complainant had gone to Police Station

instead of going to hospital and the complaint was lodged by the complainant. So, cross complaint Exh.36 clearly suggests that all of a sudden the quarrel had taken place and accused as well as the deceased both were injured in the scuffle, but as a result of the same, deceased received somewhat serious injury. Therefore, the trial Court has rightly convicted the accused for the offence punishable u/s 304(2) of IPC. He further submitted that the appellant-accused is in jail since more than 8 years, and a poor person having no criminal antecedents and hence, the appeal is required to be allowed considering the peculiar facts and circumstances of the case.

11. The witness Meeraben Keslabhai - PW-2 - Exh.10 has also stated in her deposition the same story as per that of the complainant Lekhiben. She has also identified the accused as well as the weapon used in committing the offence. Same is the position with witness PW-3 Vesalbai Amariyabhai Rathwa - Exh.11. So also, the evidence of other witnesses is of somewhat similar nature, though there are certain minor contradictions.

12. Considering the above, the appeal deserves to be allowed and it is hereby partly allowed. So far as the judgment and order of conviction and sentence dated 25.6.2004 passed by the learned Addl.Sessions Judge & 4th Fast Track Judge, Fast Track Court, Chhota-udepur, against the appellant for the offence punishable u/s 304(2) of IPC in Criminal Case No. 77 of 2003 is concerned, while confirming the order of conviction, the order of sentence is modified and reduced to the extent that the period of sentence which the appellant-accused has already undergone be treated as the sentence imposed upon him. The appellant-accused is ordered to be released forthwith. Bail bond, if any, shall stand cancelled.