

(2009) 07 GUJ CK 0006
In the Gujarat High Court
Case No : Criminal Appeal No. 343 of 2002

Haji Abdulbhai Ghugha

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 14-07-2009

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 300, 302, 304, 504

Citation : (2009) 07 GUJ CK 0006

Hon'ble Judges : J.C. Upadhyaya, J; Bhagwati Prasad, J

Bench : Division Bench

Advocate : Pravin Gondaliya, for the Appellant; M.G. Nanavati, APP, for the Respondent

Final Decision : Dismissed

Judgement

J.C. Upadhyaya, J.—Feeling aggrieved by and dissatisfied with the impugned judgment and order rendered by the Ld. Addl. Sessions Judge, Rajkot, on 6/2/2002 in Sessions Case No. 102 of 2000, recording conviction of the appellant herein, who was original accused in said Sessions Case, for the commission of offence of murder of one Rajnikant Pragjibhai, punishable u/s 302 of the Indian Penal Code [IPC], the appellant preferred this appeal in this Court.

1.1. The appellant was sentenced to undergo rigorous imprisonment [RI] for life and fine of Rs. 1,000/- and in default of payment of fine, simple imprisonment for six months for the offence punishable u/s 302 of the IPC. However, the Ld. Trial Judge recorded acquittal of the appellant for the offences punishable u/s 504 of the IPC and u/s 135 of the Bombay Police Act.

2. The prosecution case, in short, is that the incident occurred at about 5.45. p.m., on 14/5/2000 near Rameshwar Auto Garage situated in the area called Nehru Industries, Rajkot. It is the case of the prosecution that the accused inflicted blows with knife on deceased and deceased sustained bodily injuries. He

was immediately shifted to the private hospital. The hospital authority informed police and P.S.I. Shambhubhai Vashrambhai came to the hospital and recorded the FIR of the deceased himself. The Executive Magistrate recorded his dying declaration. During the course of treatment the deceased succumbed to the injuries. During the course of investigation, statements of material witnesses came to be recorded. Muddamal weapon and clothes came to be recovered. After completion of the investigation, charge-sheet came to be filed in the Court of the Ld. Chief Judicial Magistrate, Rajkot. Since the offence was exclusively triable by the Court of Sessions, the Ld. Chief Judicial Magistrate committed the case to the Court of Sessions, which came to be registered as Sessions Case No. 102 of 2000.

3. The Ld. Trial Judge framed charge at Exh. 1 against the accused for the offences punishable under Sections 302 and 504 of the IPC and u/s 135 of the Bombay Police Act, to which the accused did not plead guilty and claimed to be tried. The prosecution adduced its oral and documentary evidence. After the prosecution concluded its evidence, the trial Court recorded the further statement of the accused u/s 313 of the Code of Criminal Procedure. The accused denied generally all the allegations levelled against him by the prosecution and stated that he was falsely implicated in this case. After appreciating the evidence on record and the submissions made on behalf of both the sides, the Ld. Trial Judge concluded that the prosecution successfully proved its case regarding murder of deceased Rajnikant caused by the accused and recorded his conviction for the offence punishable u/s 302 of the IPC and awarded the sentence as hereinbefore referred to in this judgment.

4. Ld. Advocate Mr. Gondaliya for the appellant - accused submitted that the prosecution failed to prove its case against the accused. The evidence adduced by the prosecution is shaky, untrustworthy and contradictory. Alternatively, it is submitted that from the evidence adduced by the prosecution, it emerges that the incident occurred on account of provocation provided to the accused by the deceased and his companion. Therefore, this is a fit case wherein the offence of murder punishable u/s 302 of the IPC may be diluted to one punishable u/s 304 Part-I of the IPC.

5. Per contra, Ld. APP Mr. Nanavati for the State vehemently opposed this appeal and stated that the prosecution successfully proved its case relying upon the testimony of eye witnesses as well as oral dying declarations made by the deceased before the witnesses as well as the regular dying declaration recorded by the Executive Magistrate. Therefore, it is submitted that the appeal may be dismissed.

6. We have examined the record and proceedings of the case in context with the submissions made on behalf of the rival sides.

7. Re-appreciating and re-evaluating the evidence on record, it is crystal clear that the prosecution adduced its evidence in form of testimony of eye witnesses

as well as three types of dying declarations, namely, dying declaration before the police in form of FIR by the deceased, dying declaration recorded by the Executive Magistrate and oral dying declarations by the deceased before several witnesses.

7.1. Considering the evidence of the witness Hareshbhai Jadavbhai, PW 10 Exh. 23, it clearly transpires that according to his evidence, he has witnessed the incident. According to him, the accused demanded Rs. 1,000/- from him, which was arrears of his salary. He paid the amount to the accused, yet the accused started abusing him. At that time deceased Rajnikant told the accused that once he has been paid the money, why he is uttering abusive language, to which the accused felt irritated and inflicted knife blows on deceased Rajnikant. The eye witness was cross-examined at length by the defence, but nothing emerges which would make his evidence either doubtful or shaky. Considering the version of eye witness, nothing emerges that there is possibility of involvement of one more person in the incident.

7.2. Considering the evidence of witnesses, namely PW 8 Shaileshbhai Rajmibhai Exh. 19, PW 9 - Pragjibhai Karsanbhai exh. 22, PW 11 - Nareshbhai Pragjibhai exh. 26 and PW 15 Mukesh Limbabbhai exh. 32, they all deposed that they saw the deceased lying in injured condition on the ground and they inquired as to what has happened and deceased replied that he was assaulted by the accused, who inflicted knife blows on his body.

7.3. Considering the evidence of the Executive Magistrate PW 12 - Keshavlal Ramjibhai Exh. 27 and dying declaration exh. 29, it clearly transpires that the Executive Magistrate recorded the dying declaration of the deceased while the deceased was under treatment and in the dying declaration the deceased implicated the accused for the commission of the offence. Considering the evidence of the Executive Magistrate and endorsement below dying declaration exh. 29, it further transpires that at the time when the dying declaration was recorded, the deceased was conscious and was able to speak and the Medical Officer has made endorsement to that effect below the dying declaration.

7.4. The prosecution examined Dr. Hemang Vasavada - PW 17 exh. 35, who administered treatment to the deceased. The deceased succumbed to the injuries and PW 16 Dr. Mohmed Usman performed the post mortem and the post mortem report is produced at exh. 34. Considering the post mortem report and medical evidence on record, the deceased sustained incised wounds on vital parts of his body, which caused serious injuries in his internal organs. According to the medical evidence on record, the injuries were sufficient in the ordinary course of nature to cause his death.

8. Under such circumstances, considering overall evidence on record supported by the medical evidence as well as FSL evidence in the form of serological report exh. 61, it clearly transpires that on the knife as well as on the clothes of the accused blood group "B" of the deceased came to be detected, we are of the

considered opinion that the prosecution successfully proved its case regarding the murder. We do not find any reason to come to the conclusion that the case falls within any of the exceptions attached to Section 300 of the IPC. Under such circumstances, the appeal deserves to be dismissed.

9. For the foregoing reasons, the appeal is dismissed.