
(2013) 12 GUJ CK 0046
In the Gujarat High Court
Case No : Criminal Appeal No. 1060 of 2009

Harishchandra @ Hari Banvarilal Yadav	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 19-12-2013

Acts Referred:

Citation : (2013) 12 GUJ CK 0046

Hon'ble Judges : Z.K. Saiyed, J; Akil Kureshi, J

Bench : Division Bench

Advocate : Vijay H. Nangesh, No. 1, for the Appellant; Maithili Mehta, APP for the Respondent No. 1, for the Respondent

Final Decision : Partly Allowed

Judgement

Akil Kureshi, J.—The appellant has challenged judgment and order dated 25.05.2009 passed by the learned Seventh Additional Sessions Judge, Surat in Sessions Case No. 68 of 2007. By the said judgment, he was convicted for the offences punishable under Sections- 302, 504, 506(2), 188 of Indian Penal Code, and sentenced to life imprisonment for offence under Section- 302 of IPC. For other offences lesser punishments were imposed. Substantive sentences were made concurrent. The accused has therefore filed this appeal. Briefly stated, the prosecution version was as under:-

Mahendra Pratap Abhayraj Yadav owed Rs. 250/- to the accused Harishchandra Banvarilal Yadav. On 24.11.2006 at about 8:30 O'clock at night, the accused followed Mahendra Pratap Yadav and demanded the money and picked up a quarrel with him. He started beating Mahendra. The complainant Sanjay Pande therefore tried to intervene. The accused abused him and threatened him with knife which he was carrying. He thereafter assaulted Mahendra Yadav with the knife causing injury on the chest. Due to such injury, Mahendra Yadav died. Charge was framed at Exh.6 alleging that the accused had committed offences punishable under Sections- 302, 504, 506(2), 188 of the Indian Penal Code.

2. Sanjay Harinath Pande, P.W.2, Exh.13, the eye-witness and first informant deposed that at the time of incident, he lived with deceased Mahendra. On that day, at about 8:30 O'clock in the evening, when he and Mahendra were returning home, accused-Harishchandra Banvarilal Yadav met him and started beating Mahendra with fists. He therefore pulled Harishchandra with his shirt-color. Upon which, the accused took out a knife and threatened him with the knife. He therefore backed-off and accused gave one blow on the chest to Mahendra, upon which, Mahendra fell down and accused ran away. He thereafter took Mahendra in an auto-rickshaw with the help of one Mahendrapratap Rajbahadur Yadav to the hospital, where he was admitted, but in 10 minutes he was declared dead. The incident happened because of the money for the fan. He produced at Exh.14 the FIR, which he had filed.

In the cross-examination by the defence, nothing substantial has come out, except for suggesting by that there was delay in filing FIR.

3. In the FIR Exh.14, this witness had given similar account of the accused picking fight with Mahendra regarding the money for the fan and of assaulting with knife.

4. Surendra Yadav, P.W.3, Exh.17 is the brother of deceased Mahendra. His deposition is relevant only to a limited purpose of recording that on the date of incident, Sanjay and Mahendra had gone out together for the purpose of collecting ration. This is in consonance with the evidence of complainant also. However, this witness was not an eye-witness and had no personal knowledge about the incident.

5. Dr. Rajesh Patel, P.W.5, Exh.23 had carried out the postmortem. In the postmortem note Exh.24 as well as in his deposition before the Court, he referred to the following injuries.

(1) Stab wound present on anterior aspect of (Lt) side of chest, vertical, 9 c.m. below (Lt) clavicle, 5 c.m. (Lt) to midline & 123 c.m. above (Lt) heel, of size 3.5 c.m. x 1.5 c.m. x cavity deep, going downwards, backwards & medially with clean cut margins & upper angle blunt & lower acute.

(2) Abrasion present 0.5 c.m. above medial end of (Lt) eyebrow of size 1 c.m. x 0.5 c.m. red in color.

(3) Abrasion present on palmar aspect of (Lt) hand at the base of (Lt) thumb of size 1 x 0.5 c.m. red in color.

5.1 Corresponding to injury No. 1, it noticed the following internal injuries:-

Corresponding to external injury No. (1) injury present in chest wall of size 3.5 c.m. in length, longitudinal extending from 2nd intercostal space to medial end of 3rd costal cartilage. Cartilage cut into two places, 2.5 c.m. (Lt) to midline.

6. In his opinion, the cause of death was shock as a result of hemorrhage due to stab injury to aorta and trachea.

7. Vijaykuma Ramchandra, P.W.6, Exh.25 was the panch-witness to the panchnama [Exh.27] of arrest of the accused with the murder weapon Knife. He deposed that the accused was carrying in his pocket a knife, which was recovered which had blade of 4" long. In the later portion of the deposition, he turned hostile and was cross-examined by the prosecution. With respect to description of knife recovered from the accused, the prosecution did not dispute his version given before the Court.

8. Mahendra Pratap Rajbahadur Yadav, P.W.12, Exh.45 also gave the account of the incident on the night of 24.11.2006. He claimed to have seen the incident when the accused gave knife blow to the deceased after picking up a quarrel regarding payment of money for the fan.

9. Dilipkumar Mahobatsinh Brahmbhatt, P.W.14, Exh.50 was the Investigating Officer. He gave detailed account of steps under taken by him during the course of investigation.

10. Various articles collected during the course of investigation were sent for forensic analysis. The forensic report, read in conjunction with serology report Exh.38, established presence of blood of Group-"A" on the cloth of deceased, those of the accused and also on the murder weapon.

11. This in the nutshell evidence on the record. From such evidence, involvement of accused in assaulting the deceased with knife and causing injury which ultimately proved fatal, is sufficiently established. The complainant - Sanjay Pande was himself an eye-witness. He lived in the same house with deceased Mahendra. On the date of incident, he had gone out with Mahendra for getting ration. While returning, the accused picked up a quarrel with the deceased about payment of money and stabbed him on chest with the knife. Sanjay Pande shifted Mahendra with help of another person also named Mahendra, but the patient died shortly after reaching the hospital.

12. This was corroborated by Mahendra Pratap Yadav, P.W.12, Exh. 45, who had witnessed the incident and gave similar account.

13. Dr. Rajesh Patel, who had carried out the postmortem described the injuries in particular. Injury No. 1 was stab injury on the chest. In his opinion, such injury could have been caused by the murder weapon knife shown to him.

14. In addition to such evidence, the forensic evidence corroborated the prosecution version. Blood on the cloth of the deceased, those of the accused as well as murder weapon carried group-"A".

15. In that view of the matter, the involvement of the accused is fully established. The question however is one of the sentence. If we peruse the evidence more closely in this context, as per the panch-witness Vijaykumar Ramchandra, P.W.6, Exh.25 the knife recovered from the accused had blade of 4" long. The postmortem note Exh.24 indicates only one stab injury on the chest. Other two injuries noted were minor abrasions on the eyebrow and on the hand.

No other injuries were recorded. Even the injury in the chest was of 3.5 c.m. X 1.5 c.m. cavity deep. The cause of death was due to hemorrhage, as a result of stab injury. Dr. Rajesh Patel. P.W.5, who carried out the postmortem agreed that looking to the injury nos.2 and 3, it can be safely presumed that there would be a scuffle before injury No. 1 was caused.

16. Even as per the eye-witnesses, the complainant P.W.2 and Mahendra, P.W.12, there was a fight between the deceased and the accused about the payment of money for the fan, upon which the accused gave a knife blow to the deceased.

17. Few things immediately emerge. Firstly, the accused had no premeditation of causing death. Intention to commit murder was therefore simply not present. The blow was given in the heat of the moment, when the accused would have been deprived of his control due to the sudden fight. The clear fact that the deceased was going to pass by the said road at night surely was not known to the accused. It was thus a chance meeting.

18. Looking to the manner in which the incident took place, the weapon used that is a knife with 4" inch blade and the fact that in sudden heat of the moment, the accused gave only one blow, we are convinced the case would fall under Part-II of Section 304 of Indian Penal Code. The accused had ample opportunity to give repeated blows, if so desired. The complainant Sanjay Pande deposed that being threatened, he backed-off, upon which the accused gave one blow. Nothing prevented the accused from giving more blows, if he so wanted to. Under the circumstances, the conviction of the accused is converted from that u/s 302 to Section- 304 Part-II of Indian Penal Code. Looking to the facts and circumstances, his sentence is reduced to 07 years of rigorous imprisonment. Rest of the directions for sentence and payment of fine remain unchanged. Appeal is allowed in part. If the accused has already served out the sentence, he shall be released forthwith, if not required in any other criminal case. Accordingly, appeal is disposed of.

R & P to be transmitted to the Trial Court.