
(2013) 10 GUJ CK 0086
In the Gujarat High Court
Case No : Criminal Appeal No. 1368 of 2009

Jayeshbhai Lallubhai Sharma

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 04-10-2013

Acts Referred:

Citation : (2013) 10 GUJ CK 0086

Hon'ble Judges : K.S. Jhaveri, J;K.J. Thaker, J

Bench : Division Bench

Advocate : Mrudul M. Barot, for the Appellant; C.M. Shah, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

K.J. Thaker, J.—The appellant - original accused was inter alia sentenced to undergo life imprisonment and was ordered to pay fine of Rs. 1,000/-, in default rigorous imprisonment for one year for offence punishable u/s 302 of Indian Penal Code by impugned judgement and order dated 01.07.2009 in Sessions Case No. 151 of 2008 by the Additional Sessions Judge, Fast Track Court No. 4, Vadodara. The appellant - accused was acquitted of the charges levelled against him under sections 201 & 504 of Indian Penal Code. The accused was given benefit to set off. The accused is the elder son of the deceased - Lallubhai Kalyanjibhai Sharma. As per the prosecution case, the accused was unemployed and always used to pick up fights at his house on trivial issues. On 15.09.2007, at around 06.00 pm, when the complainant and deceased were present at their house, the accused came from outside and demanded Rs. 10/- from the complainant but as the complainant had only Rs. 5/- with her she gave that money to the accused and thereafter went to prepare tea for the deceased. The complainant then went upstairs to give tea to deceased and at that time the accused followed her upstairs and started quarreling with the complainant. Thereafter, he snatched away the cup of tea from the deceased's hands and started beating him. He picked up an aluminium strip which was lying nearby and

started beating the deceased with it. The complainant tried to intervene but the accused abused her and proceeded to assault her and therefore being afraid the complainant ran downstairs. The accused then went out of the house. Thereafter, the complainant went upstairs and saw that the deceased was lying in an unconscious state. The complainant therefore informed her younger son who called the doctor. The doctor came to the house of deceased and after checking him declared him dead. A complaint was thereafter lodged by the complainant.

1.1 Thereafter, panchnama of the scene of offence was done and post mortem was carried out. After completing the inquest panchnama, the offence was registered against the accused. After his arrest and necessary investigation, chargesheet was submitted against the accused. Ultimately, as the case was exclusively triable by the Sessions Court, the same was committed to the Sessions Court.

1.2 The trial was initiated against the accused and during the course of trial the prosecution examined the following witnesses as oral evidences whose evidence was read before us:

1.3 The prosecution also exhibited the following documents which we have perused:

1.4 At the end of the trial and after recording the statement of the accused u/s 313 of Cr.P.C. and hearing arguments on behalf of prosecution and the defence, the learned Additional Sessions Judge convicted the respondent of the charges leveled against him by impugned judgement and order. Being aggrieved by and dissatisfied with the aforesaid judgement and order passed by the Sessions Court the appellant has preferred the present appeal.

2. Mr. Mrudul Barot, learned advocate appearing for the appellant submitted that the trial court has not appreciated the facts, evidence and circumstances of the case in its true perspective which has ended in miscarriage of justice. He submitted that the trial court has erred in holding that the prosecution has proved its case beyond reasonable doubt against the present appellant.

2.1 Mr. Barot submitted that most of the witnesses have turned hostile and that there is no eye witness to the case other than the complainant and that the case is based on circumstantial evidence other than the evidence of the complainant. He submitted that there are number of inherent infirmities in the prosecution evidence and that in these circumstances the trial court has erred in convicting the appellant u/s 302 of Indian Penal Code. He submitted that, therefore, the appellant - accused deserves to be acquitted by granting benefit of doubt.

3. Ms. C.M. Shah, learned APP has strongly supported the impugned judgment and order passed by the trial court and submitted that the same does not call for any interference by this Court. She has submitted that the prosecution has proved the case against the present appellant beyond doubt.

3.1 Ms. Shah submitted that it is true that some of the witnesses have turned

hostile, however, hostility of those witnesses does in no way harm the prosecution case. She has drawn the attention of this Court to the injuries sustained by the deceased which are described in column No. 17 of post mortem report coupled with the evidence of doctor and submitted that the injuries inflicted by the appellant were sufficient to cause death of the deceased and therefore the conviction of the appellant is just and proper.

3.2 Ms. Shah has submitted that considering the cumulative effect of evidence of witnesses, complaint, the chequered history of the appellant and the medical papers, the case against the appellant has been proved beyond reasonable doubt and no leniency may be shown in this case.

4. We have gone through the judgement and order passed by the trial court. We have also perused the oral as well as documentary evidence perused by the trial court and also considered the submissions made by learned Advocates for both the sides. As per the latest decision of the Apex Court, we have appreciated, re-appreciated and re-evaluated the evidence led before the trial court in its entirety but we are unable to persuade ourselves to take a different view than the one taken by the trial court. In light of the decision of the Apex Court, it shall be relevant for us to rediscuss the evidence of crucial prosecution witnesses.

5. P.W.1, P.W. 2 & P.W. 3 who are the panch witnesses have been declared hostile as they have not supported the prosecution case. P.W. 4, also a panch witness of the scene of offence panchnama has supported the panchnama. P.W. 7, P.W. 8 and P.W. 13 have also been declared hostile.

5.1 P.W. 5 - Geetaben Lallubhai Sharma is the eye witness and the complainant in the present case. She has deposed vide Ex. 26 that the accused was a divorcee and unemployed. She has stated that a year prior to the alleged incident, the accused had assaulted her on head, legs and hands as a result of which she had sustained fracture of leg and around 8 stitches on her head and was bedridden for around a year. She has stated that she had filed a complaint for the same pursuant to which the accused was arrested and had been behind bars for around six months. This witness has stated that the accused repented and therefore he was released on bail after they paid bail bond. However, thereafter also he started drinking liquor and used to frequently quarrel with the family members for money to buy liquor.

5.2 P.W. 5 has further stated that on the date of incident, at around 06.00 pm, when the complainant, deceased and accused were present at their house, the complainant gave tea to accused and went upstairs to give tea to deceased and at that time the accused followed her upstairs and started quarreling with the complainant. Thereafter, he started beating the deceased with a stick. She has further stated that he also picked up an aluminium strip which was lying nearby and started beating the deceased on his back and head with it. This witness has stated that she tried to intervene but the accused abused her and proceeded to assault her and therefore being afraid she ran downstairs. The accused then

went out of the house. Thereafter, the complainant went upstairs and saw that the deceased was lying in an unconscious state. The complainant therefore informed the neighbours, her brother and son-in-law. She has stated that she also informed her younger son who called the doctor. The doctor came to the house of deceased and after checking him declared him dead. The family members thereafter took the dead body to the hospital.

5.3 What is note-worthy in the present case is that P.W. 5 in her deposition has categorically stated that though the accused is her son, he may not be set at large as she apprehended that the accused shall kill her and her son. She has also stated that the accused used to beat them and harass them and therefore she was afraid of him.

6. P.W. 9 is the son of the deceased and younger brother of the appellant - accused. The deposition of P.W. 9 is at Ex. 35 as per which it is borne out that the appellant was a habitual drunkard which had actually ruined his life. His marriage was a failure and his wife divorced him because of his drinking habits. It is also borne out from the deposition of this witness that the accused used to quarrel with the family members for money for drinking and also did not concentrate in his work. He has also stated that earlier also he had assaulted his mother as a result of which she sustained fracture on her leg and therefore a police case was filed. It is also borne out that the accused was in custody and thereafter was released on bail pursuant to a compromise.

6.1 P.W. 9 has mentioned that on 15.09.2007 he had left for work in the morning and at around 08.30 pm he received a phone call from his mother stating that the accused had beaten his father and therefore he rushed home and saw that the accused was sitting downstairs and his father was upstairs. When he went upstairs he saw his father lying on the floor and there were injuries on his back. This witness has stated that he tried calling his father but to no avail. This witness has further stated that thereafter Dr. Vaghela was called home and after checking Dr. Vaghela told them that his father had passed away.

6.2 P.W. 9 has further stated that he had seen aluminium strip and a wooden strip lying upstairs at the scene of offence. He has stated that the strips contained blood stains. He has stated that he asked about the occurrence of the incident from his mother to which he told him that the accused had demanded money from her and as the same was not given he started abusing and assaulting them and that the accused had beaten his father.

7. P.W. 10 - Mukesh Sharma is the nephew of the deceased and cousin of accused. He has also supported the case of the prosecution and reiterated the story as mentioned by the wife and son of deceased. He has mentioned that the accused was a habitual drinker and used to pick up quarrels with his family members and that on previous occasion the accused had assaulted the wife of deceased. He has also stated that on the date of incident Bhavesh (P.W. 9) had received a phone call that the accused had beaten his own father as they had

denied giving him money for buying liquor.

8. P.W. 13 - Suresh More who is the brother-in-law of accused, though has been declared hostile, it appears that he has confirmed the fact that the appellant - accused was in a habit of drinking liquor and picking up fights with his family members and that earlier also he was involved in a criminal case as he had assaulted and injured his mother. He has also confirmed the fact that on the date of incident the accused had beaten his own father as his parents had denied giving him money for liquor.

9. P.W. 6 - Dr. Ashok Mahajan is the medical officer who had performed the autopsy on the dead body of the deceased. He has stated the cause of death to be due to shock following hemopneumothorax following injury to left lung following trauma. He has deposed that the deceased had suffered from Cancer of tongue and throat. He further stated that internal injuries found on the body of the deceased could be possible due to hard and blunt substance as also the muddamal like aluminum and wooden strips which were allegedly used for the offence in question.

10. The post mortem report at Ex. 31 is also perused by this Court. Column No. 17 of the said report which states the nature of injuries on the dead body reads as under:

17. Ext. Injuries: (1) abrasion 3 x 0.7 cm on left shoulder back (2) Contusion 5 x 2 cm on below Inj. No. (1) (2) having a abrasion 2 x 0.5 cm in it (3) Contusion irregular in area of 9 x 6 cm on left back of shoulder upper scapular region. (4) Contusion irregular 7 x 5 cm on left back of chest lower outer scapular region. (5) Contusion 5 x 5 cm right back of chest, irregular, upper part just right to middle. (6) Contusion 4 x 3 cm on right middle back of chest 2 cm below Ext. Inj. No. 5 (7) Abrates contusion 5 x 2 cm right outer back of shoulder. (8) Rail road pattern contusions 5 x 2 cm oblique 3 in No. , parallel to each other on left back of chest (9) Rail road pattern contusion 10 x 2 cm starting from left scapular region, crossing midline to right lower back of chest (10) Contusion irregular in middle of back of chest in area of 11 x 7 cm on both sides of midline. (11) Contusion 3 x 1 cm on left iliac breast (12) Contusion 2 x 1 cm on left antr supr iliac spine (13) Contusion, 2 in No. 4 x 2 cm of 2 x 2 cm on outer aspect of left gluteal region (14) Abrasion of 3 x 2 cm on left back of thigh U1/3rd (15) Abrasion 4 x 0.7 cm vertical on left leg Anteromedially U1/3rd (16) Abrasion 1 x 1 cm on left medial malleolus (17) Abrasion 2 x 1.5 cm on left forearm laterally middle third (M1/3rd) (18) Abrasion 3 x 0.5 cm left arm posterolaterally middle third (19) Contusion on both lips middle part with loosening of middle four teeth of both jaws with surrounding hemorrhage (20) Abrasion 1.5 x 1 cm on right clavicle middle third (M/3rd) (21) Abrasion 0.5 x 0.5 cm on left ear lower part.

All injuries are red in colour.

10.1 From the evidence of P.W. 6 and the post mortem report it is clear that the death of the deceased was homicidal. This takes us to the point as to whether

the accused as the only person who could have been held guilty. The evidence of witnesses more particularly P.W. 5 & P.W. 9 who are the mother and brother of accused cannot be ignored.

11. Considering the facts and circumstances of the case, it cannot be said that the incident occurred at the spur of moment as submitted by learned advocate Mr. Barot. It cannot be said that the accused had no intention or any knowledge to do away with his own father who was suffering from cancer, belonged to a lower strata of society and it cannot be believed that only under the influence of liquor, the accused committed this brutality. The post mortem report reveals the brutality committed by a son. Moreover, the chequered history of the appellant also does not permit us to convince ourselves to the aspect of the fact that the alleged offence occurred in a spur of moment. The accused was a habituated offender who had earlier beaten his mother, was in jail for the same and eventually was released on bail pursuant to bail bond. His wife also deserted him due to his vagabond habits. The post mortem report leaves no doubt in our mind that it was a homicidal death that too committed by the appellant-accused.

12. Such a gruesome and brutal murder cannot be in any way considered u/s 304 (Part I) or (Part II) of Indian Penal Code. The appellant - accused had tried to pitch the case that a son would have no motive to kill his own father. However, we are not persuaded to accept this submission. The appellant - accused had threatened his parents to leave home. This incident cannot be inferred to have been committed in a fit of rage but is a calculative move. The appellant - accused did not learn from a previous mistake he committed in the past by assaulting his mother and thereby going behind bars. The appellant - accused still continued with his vagabond habits and continued consuming liquor and quarreling with his family members.

13. Considering the aforesaid decisions, in this case also it is proved that it was the accused who had committed the murder and no one else. Therefore, it will not be proper for us to upturn the judgement of the learned trial judge which we are in complete agreement with as the same is based on sound reasonings. The appeal is therefore devoid of any merits and deserves to be dismissed. Accordingly, appeal is hereby dismissed. The judgement and order dated 01.07.2009 passed by the Additional Sessions Judge, Fast Track Court No. 4, Vadodara in Sessions Case No. 151 of 2008 is confirmed. R & P to be sent back forthwith.