

(2015) 06 GUJ CK 0027
In the Gujarat High Court
Case No : Criminal Appeal No. 1295 of 2010

Jivabhai Himmatbhai Tadv

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 11-06-2015

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 313, 374(1)
Penal Code, 1860 (IPC) — Section 302, 304(2), 433, 504

Citation : (2015) 06 GUJ CK 0027

Hon'ble Judges : Anant S. Dave, J;G.B. Shah, J

Bench : Division Bench

Advocate : Sadhana Sagar, for the Appellant; Krina Calla, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

G.B. Shah, J.

1. The present appeal under Sec. 374(1) of the Code of Criminal Procedure (hereinafter referred to as "the Code" for short) has been filed by the appellant-original accused(hereinafter referred to as "the accused" for short) being aggrieved and dissatisfied by the judgment and order dated 6th May, 2010 passed in Sessions Case No. 88 of 2008 by the learned Additional Sessions Judge, F.T.C. No. 7, Vadodara, Camp at Chhota Udepur, whereby the accused has been convicted for the offence punishable under Secs.302 of IPC and sentenced to suffer imprisonment for life and to pay fine of Rs. 500/-, in default, to suffer further rigorous imprisonment for fifteen days. Though the accused was convicted for the offence punishable under Section 135 of Bombay Police Act, no separate sentence was awarded. The accused has been acquitted of the offence punishable under Section 504 of IPC. He was given set off for the period he was in custody, if in case the State decides specific period to undergo life imprisonment under section 433 of the Code.

2. The case of the prosecution in short is that a complaint was filed by complainant-Shivabhai Chhitabhai Tadvī, on 16-7-2008 alleging inter alia that he was doing labour work and residing with his wife, three children and widow mother. On 15-7-2008, he returned home after his labour work and went for prayer at Hanuman Temple. When he returned home at about 9.30 p.m., his neighbour Jivabhai Himmatbhai, the accused herein, was quarrelling with his wife by using abusive language. When the wife of the complainant asked him not to use abusive language as guests were coming to their house, the accused became furious and by asking as to who is she to intervene in their matter, gave blows with the armed knife on the left side of her chest causing her grievous injuries. The complainant and his uncle Chaturbhai called 108 Ambulance for taking her to the hospital. However, she died on the way to the hospital. The said complaint was registered with the Rangpur Police Station being I.C.R. No. 21 of 2008 for the offences punishable under Sections 302 and 504 of Indian Penal Code and Section 135 of Bombay Police Act and investigation started. During the course of investigation, the Investigating Officer recorded statements of various witnesses, drew panchnama of scene of offence, sent the dead body for post mortem and arrested the accused. At the end of investigation, charge sheet was filed against the accused before the learned J.M.F.C., Chhota Udepur. As the learned J.M.F.C., Chhota Udepur did not have jurisdiction to try the case, the case was committed to the Court of Sessions at Vadodara where it was numbered as Sessions Case No. 88 of 2008. The learned Sessions Judge framed charge against the accused which was read over and explained to the accused. The accused pleaded not guilty to the said charge and claimed to be tried.

2.1 To prove the case, the prosecution examined 11 witnesses in all and also produced and placed reliance upon various documentary evidence numbering 20. After evidence of prosecution witnesses was over, further statement of the accused was recorded under Sec. 313 of the Code. The accused stated that he has not committed the offence and was falsely implicated in the case.

2.2 At the end of trial, upon hearing the learned advocates appearing for the respective parties, the learned Sessions Judge convicted the accused for the offence punishable under section 302 of IPC and sentenced to suffer imprisonment for life and to pay fine of Rs. 500/-, in default, to suffer further rigorous imprisonment for fifteen days as mentioned in the judgment giving rise to the present appeal.

3. Heard learned advocate, Ms. Sadhana Sagar for the appellant-accused and learned APP, Ms. Krina Calla, for the respondent-State.

4. Ms. Sadhana Sagar, learned advocate for the accused, submitted that though the incident in question happened in front of the house of complainant at about 9.30 p.m. in the presence of other persons in the society and guests, no statement of any of them has been recorded by the investigating agency and the persons, whose statements were recorded, have not seen the incident and they are interested witnesses and, therefore, their statements cannot be relied upon

for basing conviction. Taking us through the evidence of the complainant at Exh.22 and Dr. Satishkumar Jagdishprasad at Exh.46, who examined the victim and produced case papers vide Exh.47, she submitted that there are contradictions appearing in the version given in the complaint and the evidence of doctor as well as other witnesses which are fatal to the case of the prosecution. Drawing our attention towards the map at Exh.27 and evidence of the person at Exh.26, deposition of Satish Kumar Shah, who prepared the map, she submitted that this witness has deposed that he did not see any mark/sign at the place of offence and therefore, no actual but approximate measurement was taken by him. Further, knife allegedly used in the commission of offence has been sent to FSL for analysis but there was no blood found on the knife creating a doubt about the case of the prosecution. She further submitted that there was no intention or motive on the part of the accused to cause death of the deceased. As case against the accused has not been proved by the prosecution beyond reasonable doubt, she submitted that conviction of the accused was improper and illegal. She, therefore, requested to allow this appeal by quashing and setting aside the impugned judgment and order.

4.1 Mrs. Sadhana Sagar further submitted that in case if the Court is not convinced with the aforesaid submissions, without prejudice to the rights and contentions and without admitting anything by the accused, alternatively she submitted that the incident occurred in a spur of moment due to excitement and only a single blow has been inflicted by the accused on the deceased. Further, there was no premeditation on the part of the accused and therefore, it can be inferred that there was no motive or intention on the part of the accused to commit murder of the deceased and hence, she submitted that case of the accused would fall under Section 304(2) of IPC and not under Section 302 of IPC. She, therefore, requested that conviction of the accused may be altered from Section 302 of IPC to Section 304(2) of IPC and sentence may be ordered accordingly.

5. Learned APP, Mrs. Krina Calla for the respondent-State, taking this Court through the oral as well as documentary evidence and impugned judgment and order, submitted that the deceased died due to grievous injury sustained by her on the left side of her chest. She further submitted that case against the accused has been proved by the prosecution beyond reasonable doubt through the evidence of complainant, his daughter-Vilasben at Exh.24 and other witnesses examined by the prosecution.

5.1 She further submitted that looking to the grievous injuries inflicted on the vital part of the body of the deceased, it cannot be said that there was no intention or motive on the part of the accused. According to her, there was definite intention and motive on the part of the accused as he has inflicted injury with knife on the chest on left side knowing that such an infliction of injury would certainly result into the death of the deceased and hence, the case should not be altered from Section 302 of IPC to Section 304(2) of IPC.

6. We have gone through the oral as well as documentary evidence shown to us by the learned advocates for the respective parties together with the well reasoned impugned judgment and order delivered by the court below.

7. It appears from the record and the submissions made by the learned advocates for the respective parties that incident took place at 9.30 p.m. in front of the house of the complainant in the chawl. The complainant is the husband of the victim. The accused and complainant are neighbours and therefore, though the incident took place at 9.30 p.m., there was no question of misidentification as there was visible light in that area.

8. It appears from the oral evidence of complainant-Shivabhai Chhitabhai Tadvī at Exh.22, who is the husband of the deceased, that when he returned after performing Arti in nearby Hanuman Temple and when his daughters and wife were present at home, the accused was abusing his wife with bad words and when the wife of the complainant asked the accused not to use abusive language, the accused came and inflicted injuries with knife on the wife of the complainant. He identified the accused in the Court as well as the muddamal knife used in the commission of offence. The oral evidence of the complainant is supported by his version given in the complaint Exh.23. Nothing is coming out from his cross-examination so as to weaken the case of the prosecution.

9. Prosecution Witness No. 5, Vilasben Shivabhai Tadvī, who is the daughter of the complainant and who has been examined at Exh.24, has deposed that when she, her sisters and some guests were there in the house and her father, the complainant, came from Hanuman temple, the accused was quarreling with his wife using bad words and her mother asked the accused not to use bad words. At that time, the accused came and asked her as to who is she to interfere in their matter and by saying so, caused serious injury with knife on the left side of chest of her mother causing her to fall down and bleeding profusely. Her mother was taken to the hospital by her father and Chaturbhai but she died on the way. She also identified the accused as well as the muddamal used in the commission of offence in Court. From her cross-examination also, nothing came out so as to shake the case of the prosecution.

10. Similar versions were given by other witnesses namely, Shanabhai Chhitabhai, Exh.25 and Chaturbhai Ragnath, Exh.28. Investigating Officer, Rameshbhai Shivaji Chauhan at Exh.31 has deposed that on 16-7-2008 when he was on duty at his police station, one Shivabhai Chhitabhai Tadvī came and narrated about the incident in question to him and he recorded his complaint at Exh.23. He entered the same in the Police Station Register and informed his superiors about the incident. He also made arrangement for inquest panchnama at Exh.13, panchnama of place of incident at Exh.12 in presence of panchas and arranged to send the dead body of the deceased for post mortem. He also recorded statements of witnesses and at the end of investigation, filed charge sheet against the accused.

11. It is true that the prosecution case is based mainly on the evidence of complainant, his daughter, his uncle and other relatives. However, it does not mean that they are not the witnesses of incident and not giving correct version of the incident. Daughter of the complainant has seen the incident happening in front of her eyes. It is the complainant and his uncle-Chaturbhai Exh.28, who caught the accused and took the knife from his hand and called the 108 Ambulance and took the victim to the hospital.

12. It appears from the evidence of complainant and other witnesses that the prosecution has proved the case against the accused beyond reasonable doubt. We have considered the fact that the incident has taken place during the night hours. It is not the case that the incident has taken place within four corners of the wall where prosecution may not be able to get any direct evidence, however, incident in question has taken place just in front of the house of the complainant in the chawl when the complainant returned from Hanuman Temple and his daughters and guests were present. Moreover, the complainant and the accused were knowing each other as they are neighbours. Therefore, though the complainant and witnesses are relatives, they cannot be called as interested witnesses and their evidence cannot be discarded especially when they are giving true version of the incident. Their evidence are reliable, trustworthy and convincing and nothing has been noticed so as to create any doubt about their testimonies.

13. Another evidence supporting the case of the prosecution regarding the role of the accused is the knife which is used in the commission of offence. However, the said knife does not bear bloodstain marks but the clothes which were worn by the accused have the bloodstains of the blood group of the deceased.

14. Apart from that, medical evidence is also on record wherein Dr. Virendra Chaudhary at Exh.15 has categorically deposed on seeing the muddamal knife that injury received by the deceased on her left side chest could be possible by way of muddamal knife. It is true that no blood stain has been found on the muddamal knife, however, the said muddamal has been identified by the complainant and witnesses, the doctor has also opined that the injury received by the deceased is possible by the muddamal knife and therefore, even though the muddamal knife alleged to have been used in the crime does not bear the bloodstain mark, the accused would not be entitled to the benefit more particularly when there are sufficient oral as well as medical evidence on record connecting the accused with the crime in question.

15. Considering the evidence of the witnesses, it becomes evident that the accused immediately after inflicting the blow of knife was caught by the complainant and Chaturbhai and thereafter the accused tried to escape. However, he was caught by the persons and was handed over to the police. Thus, the conduct of the accused does not indicate that there was no intention or motive on the part of the accused to kill the deceased in view of the fact that a single blow has been given by the accused on the deceased. However, looking to

the part selected by the accused in inflicting the single blow, i.e. left side of chest, it cannot be said that there was no knowledge or intention to kill. Had there been no intention on the part of accused to cause death, he could have come unarmed and could have selected other part in causing injury excluding the vital part. However, he came armed with knife and gave blow on the vital part with an intention to see that the deceased is done to death by a single injury. Therefore, case of the accused cannot be considered for giving benefit of giving a single blow so as to bring home the case under the provisions of Section 304(2) of IPC. We are, therefore, of the considered opinion that case of the accused would not fall under Section 304(2) of IPC.

16. We accordingly hold that the findings recorded and the conclusions arrived at by the learned Addl. Sessions Judge for convicting and sentencing the accused under Section 302 of IPC are just, legal and proper and no illegality or irregularity or perversity is noticed in the same warranting interference by this Court. In view of the above, the appeal deserves to be dismissed. The judgment and order of conviction and sentence as delivered by the court below thus requires to be confirmed.

17. Thus, this appeal is dismissed. The impugned judgment and order of conviction and sentence dated 6th May, 2010 passed by the learned Additional Sessions Judge, F.T.C. No. 7, Vadodara, Camp at Chhota Udepur, against the appellant-original accused, who is presently in jail, is hereby confirmed.

18. Records and proceedings are ordered to be sent back to the trial court forthwith after following due procedure.