
(2016) 06 GUJ CK 0019
In the Gujarat High Court
Case No : Criminal Appeal No. 805 of 2011

Jivabhai Laxmanbhai Talpada

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 10-06-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2016) 3 GCD 1973

Hon'ble Judges : Harsha Devani and G.B. Shah, JJ.

Bench : Division Bench

Advocate : N.J. Shah, APP, for the Opponent/Respondent No. 1; HCLS Committee, Advocate and Pratik B Barot, Advocate, for the Appellant No. 1

Final Decision : Dismissed

Judgement

G.B. Shah, J. - The present appeal, under section 374 of the Code of Criminal Procedure, 1973 (for brevity, "the Code"), assails the judgment and order dated 10.08.2010 passed by the learned Sessions Judge, Anand in Sessions Case No. 44 of 2010, whereby the appellant herein - original accused came to be convicted for the offence punishable under Section 302 of the Indian Penal Code, 1860 (for brevity, "the IPC") and sentenced to undergo life imprisonment and a fine of Rs. 500/- with a default clause to undergo further simple imprisonment for three months if fine is not paid.

2. Facts in nutshell of the prosecution case are that the appellant herein and one of the deceased namely, Leelaben had a love affair and when Leelaben refused to keep the relations any further, the accused got excited and on 24.12.2009 at about 1:30 a.m., he went to the house of Leelaben so as to talk about their relations and he disconnected the power supply of the house of Leelaben by cutting the wires from the nearby electric pole and thereafter, woke up Leelaben and when Leelaben refused to carry on the relations, the accused assaulted her with a scythe (dhariya) and gave repeated blows on her head. Hearing the commotion, Leelaben's son namely, Ranjit @ Bhampa and the brother-in-law

namely, Laljibhai, awoke and hence, the accused also assaulted them with the scythe (dhariya) causing serious injuries. The trio, eventually, succumbed to the injuries and for the said alleged offence, a complaint came to be lodged against the accused for the offence punishable under Sections 302 of the Indian Penal Code (for brevity, "the IPC") and Section 135 of the Bombay Police Act.

2.1 It is pertinent to note here that the appellant - accused himself had lodged the complaint before the Police Sub Inspector, Virsad camp: Dahewan on 24.12.2009 stating that on 23.12.2009 at about 8:00 p.m., after having dinner, when he was sleeping outside his home, at about 1:30 a.m. since the dogs were barking, he woke up, at that time, nearby resident deceased Bhampa, shouted that his mother was killed and hence, he went there armed with a wooden stick. Upon seeing three persons on the left side ota (raised platform) of the house, he was scared and returned. He could not recognise them in the dark. He then rushed to his uncle's house at Tekrawala Falia and informed them and thereafter, he, along with them, went to the place of incident and saw Leelaben, Lalabhai and Bhampa lying dead there. Thereafter, they went to Fatehpura village where Kanjibhai, the husband of deceased Leelaben, had gone and informed him about the incident and then, lodged the complaint.

2.2 Pursuant to the complaint, investigation was carried out. After investigation, charge-sheet was filed and as the case was triable by the Court of Sessions, it was committed to the Sessions Court, Anand.

2.3 The trial court framed charge against the accused. The accused pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution produced oral as well as documentary evidence.

2.4 In order to bring home the charge against the accused, the prosecution has examined following witnesses and has also produced several documentary evidence, as under:

ORAL EVIDENCE

S/n.

Name of Witness

Exh.

1

PW1 Rasikbhai Babubhai Parekh

9

2

PW3 Pratapsinh Ramsinh Solanki

25

3

PW4 Kanjibhai Bhagabhai Talpada

26

4

PW5 Gemabhai Karsanbhai

27

5

PW6 Indrasinh Vajesinh Parmar

28

6

PW7 Dhuliben Kalabhai

29

7

PW8 Devendrasinh Ranmalsinh Parmar

30

8

PW2 Devendrasinh Devilal Dhakroliya, MO

16

9

PW9 Kirtisinh Laxmansinh Parmar

34

10

PW10 Mohanbhai Shivabhai Patel

46

11

PW11 Najimkhan Chhadukhan Pathan, PSO

53

12

PW12 Gumansinh Nathabhai Garasiya, PSO

55

13

PW13 Sureshkumar Maganbhai Patel, IO

68

DOCUMENTARY EVIDENCE

S/n.

Document

Exh.

1

Original complaint

69

2

Inquest Panchnama

32

3

Panchnama of place of offence

35

4

Panchnama of clothes on the dead body

33

5

Panchnama of physical condition of the accused

47

6

Discovery Panchnama

48

7

Report of FSL Mobile Van Officer

70

8

Call Form

71

9

Note of Post Mortem Form of Leelaben

72

10

Note of Post Mortem Form of Ranjit @ Bhampo

73

11

Note of Post Mortem Form of Laljibhai

74

12

Yadi to Medical Officer, Badalpur

17

13

PM Certificate of deceased Leelaben

19

14

Original PM Note of deceased Leelaben

18

15

PM Certificate of deceased Ranjit

21

16

Original PM Note of deceased Ranjit

20

17

PM Certificate of deceased Laljibhai

23

18

Original PM Note of deceased Laljibhai

22

19

Yadi as to addition of Section 135 of the Bombay Police Act

75

20

Yadi as to deletion of Section 114 of the IPC

76

21

Yadi to Circle Inspector, Taluka Panchayat, Borsad

10

22

Yadi to Circle Inspector, Ras

11/12/15

23

Yadi to Police Inspector, Virsad

14

24

Map of place of offence

13

25

Muddamal Despatch Note

77

26

Receipt of FSL

78

27

Forwarding letter of FSL

79

28

FSL Report

80

29

Report of Corporeal Department

81

30

Report of Serological Department

82

31

Yadi to Circle Inspector, Taluka Panchayat, Borsad

83

2.5 At the end of the trial and after recording the Further Statement of the accused under Section 313 of the Code and hearing arguments on behalf of prosecution and the defence, the learned trial Judge convicted the appellant - accused for the offence punishable under Section 302 of the IPC as aforesaid by impugned judgment and order.

2.6 Being aggrieved and dissatisfied with the aforesaid judgment and order passed by the Sessions Court, the appellant accused has preferred the present appeal.

3. We have heard Mr. Pratik Barot, learned advocate for the appellant - accused, appointed through the High Court Legal Services Committee and Mr. N.J. Shah, learned Additional Public Prosecutor for the respondent.

4. Mr. Barot, learned advocate for the appellant - accused, submitted that the trial court has committed an error in convicting the appellant - accused and the judgment and order of the Sessions Court is against the provisions of law. He submitted that the case on hand rests on the circumstantial evidence and the prosecution case must stand or fall on its own legs and cannot derive any strength from the weakness of the defence put up by the accused. However, a false defence may be called into aid only to lend assurance to the court where various links in the chain of circumstantial evidence are complete in themselves. The circumstances from which the conclusion of guilt is to be drawn should be fully established. The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explained or pointed to any other hypothesis except that the accused is guilty. The circumstances should be of a conclusive nature and tendency. The evidence produced by the prosecution should be of such a nature that it makes the conviction of the accused sustainable. He submitted that the learned trial Judge has not properly considered and appreciated the evidence on record and looking to the provisions of law itself, it is established that the prosecution has miserably

failed to prove the whole ingredients of the offence against the present appellant - accused inasmuch as, chain of circumstances to prove the guilt of the appellant - accused, has remained incomplete. He took us through the oral as well as the entire documentary evidence so as to submit that considering the evidence on record, no case was made out for holding conviction inasmuch as, the prosecution has failed to prove the motive and/or the prior enmity and also the alleged affair between deceased Leelaben and the accused which could lead the accused to commit such crime. Mr. Barot, learned advocate for the appellant - original accused, submitted that so far as motive is concerned, no satisfactory evidence has been forthcoming on the record because, as such, it was alleged that there was a relationship between deceased Leelaben and the accused and, accordingly, in absence of Leelaben's husband, the appellant - original accused had tried to take disadvantage of the said situation, but the said relationship has not been proved and, accordingly, the said important chain is also missing and the very foundation of the case has collapsed there and then only. He further submitted that when the principal fact related to motive has not been proved, the other evidentiary factors i.e. discovery, FSL reports and serological reports have, in fact, become weak pieces of evidence and the same can be considered only for the corroboration. Thus, when the important link of motive is not proved, the rest of the links remained unconnected and accordingly, the said important factor has not been properly appreciated and considered by the learned trial judge. He then submitted that panch Mohanbhai has remained as the panch in all the three panchnamas which were carried out by the investigating officer and as the second panch has not been examined, the deposition of panch witness Mohanbhai appears not trustworthy because of the conduct of the investigating official. He drew the attention of the court to the Further Statement recorded under Section 313 of the Code, more particularly, the last portion of the said Further Statement at page No. 57 and submitted that so far as the FSL reports are concerned, a very vague question has been asked as to what he has to say so far as FSL report at exh. 80 is concerned but, the conclusion of the entire FSL report as well as the main aspect on which the court has put reliance on the FSL report, did not find place in the said Further Statement and so far as exh. 82 is concerned, the same has not been touched at all by the learned trial judge in the abovereferred Further Statement and accordingly, the same has caused prejudice to the appellant - original accused and he should be granted benefit of doubt. Moreover, there was no eyewitness to the incident to support the case of the prosecution. He further submitted that panch witnesses have turned hostile. Besides, there are material contradictions and improvements in the evidence of the prosecution witnesses and accordingly, when the case rested upon the circumstantial evidence, it was the duty of the court trying such case to see that the chain of circumstances are completed in such manner which proves the guilt of the accused beyond reasonable doubt, which in the case on hand, is lacking and under the circumstances, in the submission of Mr. Pratik Barot, the learned advocate for the accused, the learned trial Judge ought not to have convicted the accused and accordingly, he requested the court to interfere in the appeal.

5. Per contra, Mr. N. J. Shah, the learned Additional Public Prosecutor for the respondent, supported the impugned judgment and order and submitted that the same having been passed in accordance with law, does not call for any interference. It was submitted that the prosecution has successfully proved the case against the accused beyond reasonable doubt. He submitted that looking to the tenor of the evidence on record, led by the prosecution and appreciation and evaluation by the learned court below, the court below has rightly come to the conclusion that the prosecution has succeeded in proving the entire chain of circumstances and proved the guilt of the accused beyond reasonable doubt and after taking into consideration all the aspects of the matter, has convicted the accused, which is just and proper. Accordingly, he requested that the court should not interfere in appeal.

6. We have examined the matter carefully and gone through the evidence on record. We have re-appreciated and reevaluated the evidence on the touchstone of the extant laws. Undoubtedly, the case is based on the circumstantial evidence and in such cases, the courts of law should be slow while adjudicating the matters against the accused. Before proceeding with the matter any further, it is pertinent to note two things that have emerged from the record viz. i) the case is based on the circumstantial evidence and ii) from the medical evidence, more particularly, the deposition of the doctor and the Post Mortem Reports of the deceased, it is clear that the death of the deceased was not natural and was the culpable homicide, as can be seen from the injuries sustained by the deceased as well as the causes of the death of the deceased and as it is apparent and clear from the said documents, we deem it proper not to discuss the said aspect in detail. In the said backdrop, the justifiability of the conclusion arrived at for holding conviction and imposing life imprisonment on the appellant accused by the learned court below is required to be examined.

6.1 As per the complaint dated 24.12.2009 at exh. 69, which was lodged before the police by the appellant - accused himself, he, after having his meal at night, was sleeping outside his house and at about 1:30 a.m., since the dogs were barking, he woke up and at that time, he heard the shouts of deceased Bhampa, who was residing nearby his house that his mother was killed and hence, he went there possessing with him a wooden stick, however, on seeing three persons near the house of the deceased, he was afraid and returned from there. Since it was dark, he could not recognise those persons. Thereafter, he went to the house of his uncle, residing in Tekrawala Falia, woke up Gamanbhai Karsanbhai, Bhajibhai Ranchhodbhai, Mohanbhai Rayjibhai and Rayjibhai Kalabhai and apprised them of the aforesaid facts and again went to the house of the deceased along with them and saw that his sisterinlaw (bhabhi) - Leelaben was lying dead after sustaining injuries on her head and blood was oozing out. On the nearby cot, his cousin - Lalabhai was lying after sustaining injuries on his face and the head and blood was oozing out. He also saw his nephew - Bhampa lying near the legs of Lalabhai, who had sustained injuries on his head and blood was oozing out. All the three had died. Thereafter, he along with his uncle

Gamanbhai Karsanbhai, left for village Fatehpura by rickshaw, where Kanjibhai, the husband of Leelaben, had gone; they first woke up one Garasiyabhai and then, went to Fatehpura village bringing him with them where, near the temple (matano madh), Kanjibhai was sleeping; they woke up him and left for the police station where, the accused, informed Kanjibhai about the incident en route. They first went to the Virsad Police Station and thereafter, to Dahewan and lodged the complaint.

6.2 As is observed earlier, the deaths of the deceased were homicidal and from the aforesaid facts and the evidence on record, it appears that there was no eyewitness to the incident in question and the case rests on the circumstantial evidence. In the said premise, if the conduct of the present appellant - accused is seen, it speaks volumes and creates doubt inasmuch as, as per the complaint, as the dogs were barking he awoke at midnight and found deceased Bhampa shouting that his mother was killed and the accused firstly went there with a wooden stick, however, on seeing three persons outside the house of the deceased, he was scared and returned from there and went to his uncle's house; he woke up them and then again went to the place of incident along with them where he found the trio viz. Lilaben, Lalabhai and Bhampo lying dead. However, it is surprising that on hearing the barks of the dogs so also the shouts of deceased Bhampa, nobody else, except the accused had woken up. Further, as per the case of the accused, on seeing three persons outside the house of the deceased, instead of shouting for help, he returned from there and went to the house of his uncle; he woke up his uncle and others and again went with them to the place of incident. It is pertinent to note that, had the accused shouted at first instance, the picture would have been different. Moreover, the Map of the place of incident, exh. 13 denotes that the place of incident is surrounded by other residences i.e. residences of Bhaga Karsan and Chandubhai Savabhai and under the circumstances, only the present appellant - accused heard the dogs barking and also the cries of deceased Bhampa, is doubtful. Moreover, the case projected by the accused was that, with a view to loot, the unknown persons had committed this crime. However, from the evidence on record, it appears that the deceased were residing virtually in a hut and the house was a kachcha makan and in that circumstance, it is indigestible that any person comes for looting them and commits such a crime in which, three persons were killed. Moreover, after the incident, the accused along with his uncle - Gamanbhai went to Fatehpura, where Kanjibhai, the husband of the deceased, had gone, to inform him about the incident. However, as to how did he come to know that Kanjibhai, the husband of the deceased, had gone to Fatehpura village, creates doubt.

6.3 The aforesaid conduct of the accused, if testified with the evidence on record, it is the case of the prosecution that the accused and deceased - Leelaben had a love affair and on Leelaben's refusal to carry the said relations any further, the accused murdered her and as the other two deceased persons saw the accused, the accused also killed them. So far as the fact of love affair between the accused and deceased - Leelaben is concerned, the same gets corroboration from

the deposition of Dhuliben, who is examined as PW7 at exh. 29, who has deposed that she often saw the accused and deceased - Leelaben talking with each other. The aspect of love affair is believable for the reason that in a small village, even relatives, generally, do not indulge into talks particularly with a lady and do not frequent to anyone's house when no male person is at home. It has also come on record that the accused used to frequent the house of the deceased. All this leads us to believe that the accused and deceased Leelaben had affair and relations and when deceased Leelaben retracted and refused to carry the relations, the accused got excited and committed the crime.

6.4 Further, the conduct of the accused also leads us to believe that he was knowing that husband of the deceased - Kanjibhai had gone to Fatehpura on that fateful day and taking disadvantage of the same, he went to the house of deceased Leelaben for persuading her about their relations and on her refusal, killed her and as the brotherinlaw and the son of deceased - Leelaben saw him committing such a crime, killed them also.

6.5 Further, we have also perused the recovery panchnama, exh. 48, by which, the appellant herein - accused, discovered the clothes hidden at his house viz. a shirt and a pant, put on by him at the time of commission of offence. From the pocket of the shirt, 12 currency notes in the denomination of Rs. 500/amounting to Rs. 6,000/were also recovered. The shirt was stained with blood. The accused also discovered the weapon Danti, which was hidden at the house of the deceased, by which, the electric wires were cut before the incident in question so as to disconnect the electric supply of the house of the deceased. We have also gone through the deposition of panchwitness namely, Mohanbhai Shivabhai Patel, exh. 46, of the discovery panchnama, exh. 48. This witness also supports the case of the prosecution.

6.6 Moreover, we have gone through the FSL Report and as per the Serological Report, on the weapon i.e. scythe (dhariya) used in the offence, the blood groups of the deceased viz. "B" (belonged to Leelaben) and "AB" (belonged to Bhampa) were found. Moreover, from the clothes of the accused, which were recovered at the instance of the accused himself, the blood of "B" group was found, which was of deceased Leelaben. Moreover, the accused himself had discovered his clothes and the currency notes for which, the panchnama at exh. 48 has been prepared and which is proved by the prosecution.

6.7 Thus, from overall consideration of the facts and the evidence on record and the conduct of the accused, we are of the opinion that the chain of circumstances to link the accused with the crime has been proved by prosecution successfully and the prosecution has proved the case against the accused beyond reasonable doubt and conviction is rightly imposed upon the accused. Further, on a careful perusal of the impugned judgment and order, we find that the trial court while considering the evidence on record, has very elaborately discussed the evidence adduced before it and discussed each and every aspect of the matter minutely without leaving any stone unturned and concluded as aforesaid.

6.8 Further, the learned advocate for the appellant accused is not in a position to show any evidence to take a contrary view in the matter or that the approach of the court below is vitiated by some manifest illegality or that the decision is perverse or that the court below has ignored the material evidence on record. Drawing attention of the court to the Further Statement, the learned advocate for the appellant submitted that so far as FSL Report is concerned, a very vague question has been asked as to what the appellant has to say so far as report at exh. 80 is concerned. In light of the same, we have carefully perused the Further Statement as well as the FSL Reports. The FSL Report is prepared and based on scientific process and method prescribed for the same and only expert can give his opinion. It is difficult for a layman or even an educated person to say anything against the report. Under the circumstances, if the trial Court has not put the question regarding the conclusion of each muddamal item or the main aspect on which the court has placed reliance of the said report then also in our view it would not cause any prejudice to the appellant because the said finding is always to be utilised in addition to the main evidence which has been forthcoming on the record and generally no conviction can be based solely on the outcome of the said FSL report. It has also been submitted that the alleged relationship between deceased Leelaben and the accused has not been proved and accordingly, the said important chain is missing and very foundation of the case has collapsed there and then only. The deposition of Dhuliben at exh. 29 appears trustworthy as discussed herein above and in paragraph No. 26 of the impugned judgment and order, the learned trial Judge has discussed this point at length and we find ourselves in agreement with the same and in our view, considering the said link of motive with the rest of the conduct of the appellant - original accused, discussed herein above, in our view, it cannot be said that said link of motive is not proved and it remained unconnected. It has also been vehemently submitted that panch Mohanbhai has remained as panch in three panchnamas carried out by the Investigating Officer and as the second panch has not been examined, the deposition of panch witness Mohanbhai appears not trustworthy. We have carefully perused the deposition of Mohanbhai Shivabhai, recorded vide exh. 46. The panchnamas at exhs. 47, and 48 have been proved by the deposition of Mohanbhai Shivabhai, recorded at exh. 46. This Mohanbhai Shivabhai, exh. 46 is resident of village Virsad. The third panchnama, exh. 33 is related to clothes on the body of deceased. One Mohanbhai Ishwarbhai of village Banejada was the panch of panchnama at exh. 33. Thus, the submission of Mr. Barot, the learned advocate for the appellant - original accused referred above that panch Mohanbhai has remained as panch in all the three panchnamas, is factually incorrect and we do not find any substance and merit in it. It is pertinent to note that panchnama at Mark 4/4, in which, Mohanbhai Ishwarbhai of village Banejada is the panch No. 1, was admitted by the learned advocate for the accused and accordingly, the said panchnama was exhibited as exh. 33. In that view of the matter, we are of the considered opinion that the court below was completely justified in passing impugned judgment and order. We are, therefore, of the considered opinion that the findings recorded by the trial court

in convicting the accused of the charge levelled against him are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. We are in complete agreement with the reasonings given and the findings arrived at by the trial Court. No interference is warranted with the judgment and order of the trial court.

7. In view of the aforesaid discussion, present appeal, fails and is dismissed accordingly. The impugned judgment and order dated 10.08.2010 passed by the learned Sessions Judge, Anand in Sessions Case No. 44 of 2010, is hereby confirmed. Bail bonds, if any, shall stand cancelled. If the appellant - accused is on bail, he is directed to surrender before the concerned jail authorities within eight weeks from today. Registry to return the record and proceedings, to the trial court forthwith.

8. At this juncture, we deem it proper to observe that, in a recent decision of the Hon"ble Apex Court in the case of Bhaikon @ Bakul Borah v. State of Assam, reported in JT 2013 (10) SC 373 it has been held as under:

"15. This Court, in a series of decisions has held that life imprisonment means imprisonment for whole of life subject to the remission power granted under Articles 72 and 161 of the Constitution of India. [Vide Life Convict @ Khoka Prasanta Sen v. B.K. Srivastava & Ors. (2013) 3 SCC 425, Mohinder Singh v. State of Punjab, (2013) 3 SCC 294, Sangeet and Anr. v. State of Haryana (2013) 2 SCC 452, Rameshbhai Chandubhai Rathod (2) v. State of Gujarat (2011) 2 SCC 764, Chhote Lal v. State of Madhya Pradesh (2011) 8 SCR 239, Mulla and Another v. State of Uttar Pradesh (2010) 3 SCC 508, Maru Ram v. Union of India & Ors. (1981) 1 SCC 107, State of Madhya Pradesh v. Ratan Singh & Others (1976) 3 SCC 470 and Gopal Vinayak Godse v. State of Maharashtra AIR 1961 SC 600].

16. In view of the clear decisions over decades, the argument of learned senior counsel for the appellant-accused is unsustainable, at the same time, we are not restricting the power of executive as provided in the Constitution of India. For adequate reasons, it is for the said authorities to exercise their power in an appropriate case."

8.1 Accordingly, while dismissing the appeal, we may observe that the sentence of life imprisonment, as awarded by the trial court, would not be till the last breath and the case of the appellant accused may be reviewed by the appropriate authority considering the aforesaid decision of Hon"ble Apex Court in the case of Bhaikon @ Bakul Borah (supra).