
(2002) 03 SC CK 0035

In the Supreme Court Of India

Case No : Criminal Appeal 1139 of 2001

Kalpesh Kumar @ Bhajiyu Gunvantlal Soni

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 19-03-2002

Acts Referred:

Evidence Act, 1872 — Section 3

Penal Code, 1860 (IPC) — Section 300, 302, 304

Citation : (2002) 3 ACR 2253 : (2002) 1 JT 101 Supp : (2002) 2 UJ 939

Hon'ble Judges : R. P. Sethi, J;K. G. Balakrishnan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The appellant and six others were chargesheeted for the offences punishable under sections 147, 148, 149, 302 and 328 of Indian Penal Code sections 3 and 4 of the Terrorist and Disruptive Activities Act and Section 135 of the Bombay Police Act. After the completion of the trial, six out of the seven accused were acquitted and only the appellant convicted u/s 302 of the Indian Penal Code was sentenced to undergo life imprisonment vide judgment impugned in this appeal.

2. It is submitted on behalf of the appellant that prosecution had not proved the case against the appellant beyond reasonable doubt and the statements of the prosecution witnesses cannot be believed as they allegedly suffer from inherent contradictions. It is contended in the alternative that even if the occurrence is proved to have taken place, the appellant cannot be convicted and sentenced for the offence punishable u/s 302 of the Indian Penal Code as he was not proved to have the requisite intention to commit the offence of murder.

3. The prosecution case is that in 1990 an agitation for anti-reservation was carried on at Kapadwanj and Nadiad in district of Gujarat State. Sirajbhai Siddikbhai who was student of M.P. High School studying in 10th class had gone to the school. On account of the agitation some classes were disrupted and closed. When the complainant was in his class a group of 50-60 boys led by the

appellant carrying weapons, came there. The appellant was armed with a knife in his hand. The mob was raising the slogans against the anti-reservation and compelling the students to leave the classes. When the complainant refused to join them, the appellant and his associates were annoyed. After some time Mohammed Mushabhai and Iliyasbhai relatives of the complainant came in rickshaw to call him. The complainant went to the room of the headmaster and requested him to give protection but no protection was provided. The complainant proceeded towards the gate but was prevented by the mob led by the appellant. Mohammed Mushabhai and Iliyasbhai who came to his rescue was caught by the two accused persons. The appellant gave knife blow on the left side of the chest of the Iliyasbhai who fell down and ultimately succumbed to his injuries inflicted on his person.

4. The trial court, on appreciation of the evidence came to the conclusion that the prosecution had not succeeded in establishing the common object of the unlawful assembly comprising of the seven accused who were chargesheeted for the commission of the offences under the Indian Penal Code, the TADA Act, and Bombay Police Act. However, relying upon the testimony of three eye witnesses, PW 2 Sirajbhai, PW 3, Mohammed Mushabhai and PW 4, Firojbhai, trial court found that the appellant had inflicted injuries on the person of the deceased with the intention to cause his death. The injuries found on the left side of the chest of the deceased were certified by the doctor to be sufficient in the ordinary course of the nature to cause death.

5. The learned counsel appearing for the appellant has taken us through the statements of the three eyewitnesses and argued that as there allegedly existed contradictions in their testimonies, no reliance can be placed upon them. We could not find any contradictions in the statement of the aforesaid three eyewitnesses. Mere some improvements and omissions cannot be held to be the contradictions. The omissions and improvements pointed out by the learned counsel for the appellant are of very minor nature and do not affect the merits of the case in any manner. On the basis of their testimony, it is established by the prosecution that on the date and at the time of occurrence, appellant was armed with a knife with which he inflicted injuries on the person of the deceased in consequence of which Iliyasbhai died. It is established from the medical evidence that the injuries sustained were sufficient in the ordinary course of the nature to cause the death of the victim.

6. Referring to the explanation A of Section 300 of the Indian Penal Code, learned counsel for the appellant submitted that as the occurrence had taken place without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and appellant having not taken undue advantage, offence committed by him cannot be more than that of culpable homicide not amounting to murder punishable u/s 304 part 1 IPC. We cannot agree with the submissions of the learned counsel as there is nothing on record to show that the offence was committed without premeditation in sudden fight or in the heat of passion upon a

sudden quarrel or that the accused had not taken the advantage of his position. The prosecution has successfully established that the accused along with others were agitating against the anti-reservation, he was preventing the students from attending the school, had physically obstructed the complainant from going to the class and upon intervention of Iliyasbhai inflicted injuries with his knife on the vital part of his body. The intention of the accused is apparent from the facts and circumstances of the case, the nature of the injuries inflicted and location of the body where the injuries are caused. The arguments for giving the benefit of explanation 4 to the appellant is therefore misconceived. We do not find any merit in this appeal which is accordingly dismissed.