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(2016) 01 GUJ CK 0023

In the Gujarat High Court

Case No : Criminal Appeal No. 1673 of 2006

Kantaben APPELLANT

Vs

The State of Gujarat RESPONDENT

Date of Decision : 06-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 114, Section 302, Section 304

Citation : (2016) 01 GUJ CK 0023

Hon'ble Judges : K.S. Jhaveri and R.P. Dholaria, JJ.

Bench : Division Bench

Advocate : Harshad K. Patel, Advocate, for the Appellant; C.M. Shah, APP, for the Respondent

Final Decision : Partly Allowed

Judgement

K.S. Jhaveri, J.—1. This appeal is preferred against the judgment and order dated 26.7.2006 passed by 3rd Additional Sessions Judge, Veraval in Sessions Case No. 31 of 2001, whereby the accused-appellant herein was held guilty for offence punishable under Section 302 read with Section 114 of the Indian Penal Code (for short, "IPC") and ordered to undergo rigorous imprisonment for life and to pay fine of Rs. 1,000/- and in default of payment of fine, the accused was ordered to undergo rigorous imprisonment for one month. Feeling aggrieved by the impugned judgment, the accused has preferred present Criminal Appeal No. 1546 of 2004.

2. The facts in brief giving rise to the filing of present appeal are as under:--

"2.1 It is the case of the prosecution that on 19.3.2001 in the midnight at about 1 a.m. there was some quarrel between the appellant and her son on the one side and the deceased (husband of the appellant) on the other side. Some scuffle took place between them and the appellant herein gave a blow with the stone on the head of the deceased, which resulted into serious injury and he succumbed to such injury. Initially the incident was registered as Accidental Death Case No.

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12/2001. Thereafter, FIR was registered as C.R. No. 24/2001 with Talala Police Station for the offence punishable under Sections 302 ad 114 of IPC.

2.2 On complaint being filed, investigation was carried out and the accused came to be arrested. At the end of investigation, charge-sheet was filed against the accused persons before the Magistrate Court. Since the offence was exclusively triable by the Court of sessions, the case was committed to Sessions Court and, ultimately, trial was initiated and charge came to be framed. The accused pleaded not guilty and claimed to be tried.

2.3 During the trial, the prosecution had examined following witnesses:--

2.4 The prosecution had also produced and relied upon following documentary evidence:--

2.5 At the end of trial, the Court below recorded further statements of accused persons under Section 313 of Cr.P.C. and thereafter, passed the impugned judgment and order. Being aggrieved and dissatisfied with the impugned judgment of the trial Court, present appeals are preferred before this Court."

3. Mr. Harshad Patel, learned advocate for the appellant-original accused has taken us through the evidence and tried to establish that the prosecution has miserably failed to prove its case against the appellant. He submitted that there is no eye witness to the incident and there is no material to connect the accused with the commission of crime. He also submitted that the prosecution has failed to prove any motive against the accused. He submitted that the deceased was a habitual drunker and used to give mental and physical harassment to the accused. He also submitted that the so-called eye witness, Gulshanben has not seen the incident and, therefore, her evidence cannot be relied to convict the accused. He submitted that from the evidence of Gulshanben and Mohammedbhai Musabhai it seems that they are got up witnesses and their evidence cannot be relied. However, after arguing the matter at some length, he fairly conceded that in view of the medical evidence and statements of other witnesses, though the offence against the accused can be said to have been proved, he is arguing only on the quantum of punishment. He submitted that the accused is the wife of the deceased and the deceased was used to drink and beat the accused. He submitted that the incident in question has occurred in the spur of the moment and there was no preplanning nor there was any intention on the part of the accused to kill the deceased. He also submitted that though the presence of the accused at the scene of offence is proved, it cannot be said that there was any intention on her part to kill her husband. He, therefore, submitted that the trial Court has committed an error in convicting the accused for offence punishable under Section 302 of IPC and at the most it would fall under Section 304, Part-I of IPC. He submitted that considering all these circumstances, offence alleged against the accused may be converted to Section 304, Part-I from that of Section 302 of IPC.

4. On the other hand, Ms. C.M. Shah, learned APP appearing for the State has

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submitted that the order of conviction recorded against the appellant-accused is just and proper and she has supported the conviction recorded by impugned judgment. Learned APP has contended that taking into consideration the medical evidence, evidence of the complainant and other witnesses, the view taken by the trial Court is just and proper and no interference is called for by this Court. She also submitted that the learned trial Judge has not committed any error while imposing the sentence on the accused and, therefore, no interference is called for in the present appeal.

5. We have heard Mr. Harshad Patel, learned advocate for the appellant-original accused and Ms. C.M. Shah, learned APP for the State. We have also gone through the impugned judgment as well as evidence on record. In view of the medical evidence, injury with the stone is established and it has resulted into death of the deceased, therefore, it is clear that this is a case of murder. The cause of death shown in the report is cardio-respiratory arrest due to brain hemorrhage. Therefore, it is clear that this injury is the reason for death of the deceased and this is unnatural death. However, since learned advocate for the accused has argued the matter only on the quantum of punishment, we are not discussing the evidence in detail and we have considered the matter only this limited point. Therefore, we are now required to consider the submission of learned advocate for accused Nos. 1 and 2 as to whether the offence falls within Section 302 or 304, Part-I of IPC. The crucial witnesses are PW-3, PW-8, PW-9 and PW-10. PW-8, Gulshanben is the eye witness to the incident. She has stated that the accused had given blow with stone on the head of the deceased. While PW-9, Mohammedbhai Musabhai has stated in his evidence that he had seen one person lying on the road, however, because of darkness he did not go there. Thereafter, the accused and her son came to him and asked him as to where he was going and the accused told her that the person lying on the road is my husband and he is in a drunken condition. Therefore, evidence of both these witnesses clearly establish that the accused was present at the scene of offence and she had given a blow with stone on the head of the deceased. From the evidence of PW-10, Kanuben, sister-in-law of the accused, it is clear that the accused had made extra-judicial confession before her and stated that I have committed a mistake and I have killed my husband. Taking into consideration medical evidence, it is clear that only one injury is the reason for death of the deceased, therefore, it leaves a room for the accused to argue that this is not a case for Section 302. Not only that it is also clear from the evidence on record that the deceased was a habitual drinker and he was in habit of beating his wife, the accused. Therefore, it is clear that he used to give mental and physical harassment to the accused. On the date of the incident also, the deceased was in a drunken state and the quarrel had taken place between the accused and the deceased. Therefore, though we find that the trial Court has not committed any error in convicting the accused, looking to above circumstances, it can be said that the accused is guilty of offence under Section 304, Part I of IPC and not for the offence under Section 302 of IPC. We are also required to consider the facts

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that the incident in question took place in 2001, fourteen years have passed and looking to the fact that the accused is the wife of the deceased and the offence has happened in the spur of the moment and there was no intention on the part of the accused to commit the offence. Therefore, in our opinion, this Criminal Appeal is required to be allowed by holding the accused is guilty for offence under Section 304, Part I of IPC and not for offence under Section 302 of IPC and sentence imposed upon her is required to be reduced to ten rigorous years imprisonment instead of life imprisonment.

6. For the foregoing reasons, this Criminal Appeal is partly allowed. The impugned judgment and order dated 26.7.2006 passed by 3rd Additional Sessions Judge, Veraval in Sessions Case No. 31 of 2001 is modified and instead of offence punishable under Section 302 of IPC, the accused is held guilty for the offence punishable under Section 304, Part-I of IPC and ordered to undergo ten years'' rigorous imprisonment. The period of sentence already undergone by the accused be given set off to her. The accused shall surrender before the jail authorities within a period of ten weeks from today to serve out the remaining period of sentence. Remaining part of the impugned judgment shall remain unaltered. Bail bond, if any, stands cancelled. Record and Proceedings, if lying here, be sent back to the concerned trial Court forthwith.

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