

(2015) 12 GUJ CK 0042
In the Gujarat High Court
Case No : Criminal Appeal No. 2019 of 2010

Kashinath Lingraj Pradhan and Others	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 14-12-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 188, 302, 304, 323, 34

Citation : (2015) 12 GUJ CK 0042

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

Bench : Division Bench

Advocate : J.M. Thakkar for Pravin Gondaliya, Advocate, for the Appellant; C.M. Shah, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—By way of this appeal all three accused, viz. original accused Nos. 1, 2 and 3 have challenged the judgment and order of the learned 3rd Additional District & Sessions Judge, Surat, dated 04.10.2010 in Sessions Case No. 174 of 2009, whereby each of the accused has been convicted under sections 302 and 34 of Indian Penal Code for imprisonment for life, and each of the accused is imposed fine of Rs. 1000/-, in default, to undergo simple imprisonment for one month; under section 323 of IPC, convicted for simple imprisonment for 3 months; under section 504 of IPC sentenced to simple imprisonment for 3 months; under section 188 of IPC, sentenced to simple imprisonment for 1 month. All the sentences to run concurrently. Out of the proceeds of fine a sum of Rs. 2500/- is ordered to be paid to the complainant. The accused are given benefit of set off for the period they remained in Jail.

The incident in question had occurred at 12.00 o'clock, during the intervening night of 3rd and 4th November 2008. It is the case of the prosecution that deceased-Bhagirath Karuna Pradhan and Shyam Karuna Pradhan were related and cousin brothers of accused. They had some dispute over land in their native

place. Furthermore, the accused had nurtured grudge that deceased-Bhagirath Karuna Pradhan did not invite the accused to reception held by the deceased on the occasion of having blessed with son at his native town. All the accused had entered the house of deceased-Bhagirath Karuna Pradhan. Accused-Kashinath Lingraj Pradhan was having rambo knife, accused-Kanhaiya Lingraj Pradhan was having knife and accused-Bhagwan Lingraj Pradhan was having knife. All the accused started abusing the deceased. Accused-Kanhaiya Lingraj Pradhan and accused-Bhagwan Lingraj Pradhan had beaten deceased-Bhagirath and held him while accused-Kashinath stabbed with rambo knife on the left side of chest of the deceased. Thereafter, all three accused had reached Sanjaynagar Road and stabbed deceased-Shyam Karuna Pradhan, brother of Bhagirath Karuna Pradhan on the left side and right side of chest and done him to death. Thus, the complaint has been registered for the offences under sections 302 , 323 , 504 , 34 and 188 of the IPC.

2. In pursuance of the complaint, Investigating Officer carried out investigation and filed charge sheet against the accused. As the case was exclusively triable by the Court of Sessions, the same was committed to the Court of Sessions, Surat. Charge was framed against the accused vide Exhibit 4. The accused pleaded not guilty to the charge and claimed to be tried.

3. To prove the case the prosecution has examined the following witnesses:

4. To prove the case the prosecution has produced the following documents:

5. At the end of the trial, after recording statement of accused under section 313 of the Code of Criminal Procedure and hearing arguments on behalf of the prosecution and the defence, the Trial Court delivered the judgment and order, as stated above.

6. We have learned counsel for the appellants, Mr. J.M. Thakkar and learned APP Ms. C.M. Shah for the State.

7. The learned counsel for the appellants, Mr. J.M. Thakkar has submitted that there is no evidence on record to prove the guilt of the accused, the prosecution has miserably failed to prove the Panchnama, which is produced on record, eye witnesses have not stated name of any of the accused, and therefore, the Trial Court has committed error in convicting the present appellants under section 302 of the IPC. It is further submitted that even if the case of the prosecution is accepted none of the witnesses has given name of accused No. 3-Bhagwan Lingraj Pradhan. Even if the case of the prosecution is believed PW-10-Diwakar Gopinath and PW-11-Murali Karuna Pradhan have referred the names of accused Nos. 1 and 2 only. Therefore, taking into consideration the depositions of said witnesses benefit of doubt is required to be given to accused No. 3. The learned counsel for the appellants further contended that if medical evidence is taken into consideration following injuries are recorded by Dr. Rajesh Naranbhai Patel, PW-1, who had performed postmortem of deceased-Bhagirath Karuna Pradhan, and Dr. Deepak Maheshkumar Singhal, PW-2, who had performed postmortem of

deceased-Shyam Karuna Pradhan:

Examination-in-Chief by A.P.P. Shri Rinku Parekh on injuries sustained by deceased Bhagirath Karuna Pradhan as recorded by Dr. Rajesh Naranbhai Patel:-

(i) Second number button of the shirt was missing and there was a torn wound of 2 c.m. size in the left side of shirt and there was incised wound of 6 c.m. x 3 x 1 c.m. on left side from mid-line. The front portion of shirt and pant were smeared with blood. There was stiffness over the whole body and post mortem lividity was present on the back part of the body except the pressure area. Eyes and mouth were semi-opened. Left part of face, both eyes, hand, chest and stomach part were smeared with dry blood.

(ii) On making external examination, the injuries below mentioned were found.

(a) There was a stab wound of size 3 x 1 on cavity deep present on anterior aspect of left side of chest vertical 4 c.m. left to the mid-line, 7 c.m. below and medially of left nipple and 112 c.m. above left heel lower angle acute and upper angle comparatively blunt margins clean cut going downwards backwards.

(b) There was a lacerated wound of 0.5 x 0.2 c.m. size, tissue deep, passing through lower lip margin, 4 c.m. right to mid-line, margins were irregular and contused.

(c) No internal injury was found on head during the internal examination of the dead body. In the internal examination of the chest, there was a vertical stab wound of 3 c.m. corresponding to external injury No. 15th left costal cartilage, which was 4 c.m. on left side from mid-line. 2 litre blood was accumulated in the cavity of left side of the chest. There was a stab wound of 3 x 1.5 size tissue deep present on inner aspect of lower lobe of left lung corresponding to injury No. 1. There was vertical cut wound of 3 c.m. size present on pericardium. There was one 3 x 1.5 c.m. size stab wound passing through front wall of left ventricle of the heart and its measurement was of about 3 x 1.5 c.m. size on anterior aspect. There was 350 gram of undigested food in the internal examination of the stomach wherein rice grain can be identified. No specific smell was coming from stomach. Blood of deceased was given to the Constable who came in sealed condition for further examination.

The aforesaid all injuries were ante-mortem and the death of deceased had occurred within 24 hours of performing P.M. The reason of the death of the deceased was shock as a result of hemorrhage due to stab injury over heart and left lung.

Examination-in-Chief by A.P.P. Shri Rinku Parekh Injuries sustained by deceased Shyam Karuna Pradhan as recorded by Dr. Deepak Maheshkumar Singhal:-

(i) The age of the deceased was 22 years and weight was 57 kg. This dead body was wrapped in a white coloured cloth. There was bandage of Hospital on the injury part. The structure of the dead body was normal, it was cold and rigor

mortis was present on the body. Post mortem lividity was present over the entire body except the pressure areas on the back part. The appearance of the dead body was ordinary. Both eyes were opened and due to conjunctivitis, part of eye was yellow. Mouth was open and tongue was inside the mouth. Blood stains were found on both hands and legs.

(ii) On making external examination of the dead body, following injuries were found.

(a) There was a red coloured stab wound below 6 c.m. of the right nipple of the chest which was of 6 c.m. X 2 - 1/2 and it was 2 c.m. deep.

(b) There was a red coloured surgical inter coastal chest tube wound of 2 x 1 c.m. on the anterior auxiliary line of the left side of the chest. 6 number wound was in the inter coastal space and it was on the left side from 9 c.m. from auxiliary line.

(c) There was another stab wound, 4 c.m. below injury No. 2 which was of 4 x 2 c.m. on the left side of chest, there was 3 c.m. tail in the front part of this injury and the end or the angle of the wound was blunt. The depth of this wound in the bone was as much 2.5 cm. It was red coloured and 16 c.m. on the left from mid-line.

(d) There was a stab wound in the inter-coastal space on the left side posterior aspect which was 4 x 1 c.m. in size and it was cross. This wound was red coloured and cavity deep and 7 c.m. on the left from mid-line.

These injuries were ante-mortem.

(iii) The internal injuries of the said dead body were as below.

(a) A half litre partially clotted blood was accumulated in the cavity of chest and the injury was corresponding to external injury Nos. 1-2-3 and 4. The rupture of left side was torn. Both the lungs were pale and there was one lacerated wound of 2 c.m. size in the end below left lung.

(b) The diaphragm was cut from the back side, which was of 4 c.m. size. Stab wound punctured both cavity and abdominal cavity respectively, cut spleen firstly and thereafter, diaphragm and thereafter, esophagus cardiac end and stomach and lower end of posterior aspect of left lung.

(c) Esophagus was separated from cardiac end of stomach. Semi-digested food of about half a litre was in stomach.

(d) There was cut of 10 c.m. x 5 c.m. size in the back part of spleen.

8. Taking into consideration the evidence on record and in view of the principle rendered by the Hon'ble Apex Court in the matter of Ankush Shivaji Gaikwad Vs. State of Maharashtra, , the learned counsel for the appellants submitted that case of the appellants may be considered sympathetically for conversion of sentence into section 304 , Part-I of IPC, and the sentence may be reduced to

the period the accused already undergone and suitable compensation may be fixed in lieu of the remaining sentence to be undergone.

9. Learned APP Ms. C.M. Shah for the respondent-State has taken us through the evidence of witnesses and the evidence of Investigating Officer, more particularly, evidence of PW-11, Murali Karuna Pradhan, who was present in the room. He had categorically stated that all three accused had beaten deceased-Bhagirath Karuna Pradhan and Shyam Karuna Pradhan and caused fatal injuries. It is thus, a case of double murder; no sympathy may be shown to the accused. Learned APP has further submitted that not only the offence is proved but motive is also proved against the accused. The accused have come with deadly weapons with predetermined strategy and have executed the same.

10. We have heard counsel for both the sides and examined depositions of both the medical officers, namely, Dr. Rajesh Naranbhai Patel, PW-1, who had performed postmortem of deceased-Bhagirath Karuna Pradhan, and Dr. Deepak Maheshkumar Singhal, PW-2, who had performed postmortem of deceased-Shyam Karuna Pradhan. In our view the injuries sustained by both the deceased were on vital organs and fatal. It is difficult for us to convert the offence into section 304 , Part-I of the IPC. Even in case of deceased-Shyam Karuna Pradhan, injuries sustained by him were on vital organs caused with deadly weapon. The case of the prosecution is supported by FSL Report. By depositions of PW-10, Diwakar Gopinath, PW-11, Murali Karuna Pradhan, and PW-12, Gaurav Swai, we are of the opinion that presence of the accused is proved.

11. Taking into consideration oral as well as documentary evidence we are of the opinion that the Trial Court has not committed error in convicting the accused. We are in complete agreement with the impugned judgment and order of conviction.

12. Thus, taking into consideration oral and documentary evidence, and by virtue of the fact that even report of Forensic Science Laboratory supports case of prosecution, we are of the opinion that the learned 3rd Additional District & Sessions Judge, Surat, has not committed any error in passing the judgment and order dated 04.10.2010 in Sessions Case No. 174 of 2009, We are in complete agreement with the same. The appeal deserves to be dismissed. The appeal is accordingly dismissed and the impugned judgment and order is upheld.

13. However, we observe that imprisonment for life shall not mean imprisonment till the last breath and that the State authority may consider the case of accused for remission at the appropriate time. Record & Proceedings, if lying here, be sent to the court below forthwith.