
(2009) 05 GUJ CK 0004
In the Gujarat High Court
Case No : Criminal Appeal No. 397 of 2003

Kishorbhai Khudiyabhai Vasava

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 13-05-2009

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 313, 374(2)
Penal Code, 1860 (IPC) — Section 302, 304, 34

Citation : (2009) 05 GUJ CK 0004

Hon'ble Judges : Bhagwati Prasad, J; Bankim N. Mehta, J

Bench : Division Bench

Advocate : Shilpa R. Shah, for the Appellant; A.J. Desai, for the Respondent

Final Decision : Dismissed

Judgement

Bankim N. Mehta, J.—Appellant - convict has preferred this appeal u/s 374(2) of the Criminal Procedure Code, 1973 and challenged judgment and order of conviction and sentence passed on 24-03-2003 by learned Additional Sessions Judge, Bharuch, Camp - Rajpipla in Sessions Case No. 33 of 2000 convicting him for the offence punishable u/s 302 of the I.P. Code and sentencing him to undergo life imprisonment and to pay fine of Rs. 500/-, in default thereof, to undergo simple imprisonment for one month.

2. According to prosecution case, one Jatar Magan Vasava the brother-in-law of accused Kitubhai Puniyabhai had illicit relations with the wife of complainant Chandrasinh. The complainant came to know about such illicit relations. But there was compromise between them as per the caste custom and it was agreed that Jatar Magan Vasava would pay Rs. 1000/- towards penalty to the complainant. Therefore, keeping grudge of this, accused Kitubhai Puniyabhai Vasava with other accused Gonjibhai Dhuliyabhai and accused Navabhai Jatiyabhai instigated accused Kishorbhai Vasava to kill the complainant and his family members and in furtherance of their common intention on 4-7-1999 at

22-00 hours accused Kishorbhai Vasava attacked Surkiyabhai Bhuriyabhai Vasava, the father of the complainant with knife and caused injuries. Surkiyabhai Bhuriyabhai Vasava succumbed to the injuries.

3. On the basis of the first information report lodged by Chandrasinh Surkiyabhai, son of the deceased, offence was registered and investigation was started. At the end of investigation, charge sheet came to be filed for the offences punishable u/s 302 read with Section 34 of the I.P. Code and u/s 135 of the Bombay Police Act against the appellant accused and three other persons. As the offence was triable by Sessions Court, the case was committed to the Sessions Court, Bharuch, Camp _ Rajpipla and it was registered as Sessions Case No. 33 of 2000. Learned Addl. Sessions Judge framed charge Exh. 3 for the aforesaid offences. The accused pleaded not guilty to the charge and claimed to be tried. Therefore the prosecution adduced evidence.

4. On completion of recording of evidence, the learned trial Judge explained to the accused the incriminating circumstances appearing against them in the evidence. The accused in their further statement recorded u/s 313 of the Code of Criminal Procedure, 1973 stated that false case is filed against them.

5. After hearing the learned A.P.P. for the State and learned advocate for the accused, the learned trial Judge convicted the appellant accused but acquitted other persons. Being aggrieved by the said decision, the accused has preferred this appeal.

6. We have heard learned advocate Ms. Shilpa R. Shah for appellant and learned A.P.P. Mr. A.J. Desai for the State _ respondent at length and in great detail. We have perused the impugned judgment and record & proceedings of the trial court.

7. The learned advocate Ms. Shah has submitted that the incident ensued on account of quarrel and the accused had no intention to cause death as only two injuries were caused. Therefore, the learned trial Judge committed error in convicting the accused for the offence of murder and at the most the accused could be convicted for the offence punishable u/s 304 Part-I of the I.P. Code and therefore the impugned judgment is required to be set aside.

8. The learned A.P.P. Mr. Desai has submitted that there is no evidence to indicate that the incident ensued on account of quarrel. On the contrary, it indicates that the accused followed the deceased and made assault with knife causing injuries to vital organs. Hence, the learned trial Judge was justified in recording conviction and no interference is warranted in the impugned judgment.

9. The evidence of the Doctor, who performed postmortem P.W. 10 Dr. Ajitchandra Chandulal Zaveri Exh. 46 indicates that the injuries on the dead body were possible by sharp edged weapon and in the ordinary course of nature the same were sufficient to cause death.

10. The postmortem Exh. 48 indicates the external injuries. It also indicates that the cause of death was "injuries to the vital organs."

11. The evidence of eye witness P.W. 1 Chandrasinh Sutariya Exh. 23 indicates that when the witness and his father the deceased went to purchase tobacco, the accused made assault on his father and caused injuries. The First Information Report Exh 58 lodged by the witness alleges that the accused followed them and made assault on the deceased with knife causing injuries on vital organs. The First Information Report Exh.58 does not allege any quarrel or instigation by the deceased or the witness. This evidence clearly indicates that the accused made assault on the deceased without any provocation or instigation. Therefore, it cannot be said that on account of quarrel and provocation, the accused made assault on the deceased. Hence, the submission of the learned advocate for the appellant that the incident ensued on account of quarrel, cannot be accepted.

12. The evidence of P.W. 3 Rajatbhai Sukariyabhai Exh. 28 also indicates that the accused made assault with knife on the deceased and the deceased made statement before him that the accused caused injuries with knife. This statement is an oral dying declaration implicating the accused in the offence.

13. In view of above evidence, it clearly emerges that the deceased was assaulted with knife by the accused without any provocation and the injuries were caused on vital organs of the deceased. It also appears that the accused assaulted the deceased with an intention to commit his murder. Learned advocate for the appellant has not been able to point out any infirmity in the impugned judgment. Therefore, the learned trial Judge was justified in recording conviction of the accused for murder and no interference is warranted in the impugned judgment.

14. In the result, the appeal fails and stands dismissed and judgment and order of conviction and sentence passed on 24-03-2003 by learned Additional Sessions Judge, Bharuch, Camp - Rajpipla, Bhavnagar in Sessions Case No. 33 of 2000 is confirmed. The muddamal be disposed of as directed by the trial court.