
(2015) 09 GUJ CK 0048
In the Gujarat High Court
Case No : Criminal Appeal No. 978 of 2011

Lavghanbhai Devjibhai Vasava	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 29-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374
Penal Code, 1860 (IPC) — Section 300, 302, 304

Citation : (2015) 09 GUJ CK 0048

Hon'ble Judges : Anant S. Dave, J; Z.K. Saiyed, J

Bench : Division Bench

Advocate : Gajendra P. Baghel and Shailesh C. Sharma, for the Appellant; Jirga Jhaveri, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Z.K. Saiyed, J—By way of present appeal, filed under Section 374 of the Code of Criminal Procedure, 1973, the appellant has challenged the judgment and order of conviction dated 30.06.2009 passed by the learned Principal Sessions Judge, Bharuch, in Sessions Case No. 71 of 2008. The said case was registered against the appellant- original accused for the offences punishable under Section s 302 of the Indian Penal Code. By the impugned judgment and order the appellant is convicted under Section 302 of the Indian Penal Code and sentenced to undergo life imprisonment and a fine of Rs. 500/-, in default, S.I. for three months for the offence punishable under Section 302 of the Indian Penal Code.

2. According to the prosecution case, original complainant of this case namely Shantaben @ Dhaniben Somabhai is mother of deceased Shakuben. She lodged a complaint before Nabipur Police on 15.3.2008 that her daughter deceased Shakuben was married to accused Lavghanbhai Devjibhai Vasava in Fichwada village before about eight years. Deceased Shakuben and the accused had been living in Navinagri of Shahpura, the village of complainant, for about one year and maintaining themselves by doing labour-work. In the morning of the day of

the incident, deceased Shakuben and her mother Shantaben had gone for labour-work of weeding in the farm of Patel of the village where crop of ladies' finger had been cultivated. They returned home at about 12-00 hrs in noon for having their meal and her daughter went to her house. When the complainant was at her house, Vishnu, aged 6 years, son of deceased Shakuben came to her house and told that his mother has been hit with leg of a cot on her head and she was bleeding. Therefore, she immediately went to the house of deceased. At that time, deceased Shakuben was lying near hearth in the house in unconscious state and a blood stained leg of cot was lying there. It was known from the people gathered there, that an altercation took place between deceased and the accused in connection with preparing food. As the accused got instigated, he hit leg of cot on head of the deceased and ran away. As the deceased was bleeding from her head, Kaliben -daughter of the complainant, Lalo Amir Vasava - resident of her street and Dinesh Kashibhai Vasava took deceased Shakuben to a hospital at Bharuch in an auto rickshaw of Pravinbhai Gopalbhai, resident of the village. The complainant returned to her house. Pravinbhai returned home with his rickshaw in evening and told that the deceased has been sent to Vadodara from Bharuch for further treatment. Thus, under such circumstances, the original complainant Shantaben lodged a complaint before the police.

3. Thereafter, charge Ex.5 came to be framed and explained to the accused person, to which he pleaded not guilty and claimed to be tried.

4. In order to bring home the charges against the accused person, prosecution has examined 11 witnesses and also produced 21 documentary evidences.

5. Thereafter, after filing closing pursis by the prosecution, further statement of accused person under Section 313 of the Code of Criminal Procedure, 1973 was recorded, wherein the accused person denied the case of the prosecution and submitted that a false case is filed against him.

6. On conclusion of trial and after appreciating the oral as well as documentary evidence, the learned Judge vide impugned judgment and order convicted the appellant - accused as stated above.

7. Being aggrieved by and dissatisfied with the said judgment and order of conviction dated 30.06.2009 passed by the learned Principal Sessions Judge, Bharuch, in Sessions Case No. 71 of 2008 the appellant has preferred the present appeal before this Court.

8. Heard Mr. Shailesh C. Sharma, learned counsel for the appellant. He has contended that the judgment and order passed by the learned Judge is contrary to law and evidence on record. He has contended that the learned Judge has not properly appreciated oral as well as documentary evidence adduced by the parties in its proper perspective.

9. He has contended that in the present case prosecution has not examined any eyewitness except one child witness, son of the deceased and appellant. He has

further contended that so called dying declaration recorded by the head constable is not proved beyond reasonable doubt. He has further contended that statement of child witness is not trustworthy, reliable and acceptable. He has contended that in support of the statement of child witness no evidence is produced on record by the prosecution. He has contended that as per evidence of the P.W. Nos. 1 and 5 through whom oral dying declaration was recorded before them the prosecution could not prove its case beyond reasonable doubt and in cross-examination defence has established that both the witnesses are not trustworthy, reliable and acceptable.

10. He has read evidence of the P.W. No. 7 doctor and contended that this witness has only disclosed injuries but this witness has not given treatment to the deceased. He has read evidence of the P.W. Nos. 8 and 9 and contended that in this case prosecution could not establish any motive of the present appellant to commit murder of his wife. He has further contended that this is a simple case of sudden provocation for the dispute of cooking meal and in result of that, blow of leg of coat was given to the deceased. He has contended that ingredients of Section 300 of the Indian Penal Code are not proved beyond reasonable doubt by the prosecution and prosecution could not prove its case that present appellant has committed the said murder with motive. He has further contended that present appellant is in jail for the last seven years and he is poor and his son is living with matrimonial grandmother. He has prayed to reduce life imprisonment to 10 years. Lastly, he has read observations of the learned Judge and contended that the observations made by the learned Judge are not proper in the eye of law and therefore, judgment and order of the learned Judge deserves to be set aside.

11. Heard Ms. Jirga Jhaveri, learned APP for the respondent - State. She has contended that this is not a case of Section 304 Part-2 of the Indian Penal Code. She has read injuries from the evidence of the doctor as well as P.W. No. 6 and contended that injuries which are found on the body of the deceased disclosed that with an intention to kill his wife blows of leg of coat were given on the head of the deceased and eight fractures were found on the body of the deceased. She has further contended that as per evidence of P.W. Nos. 1 and 5 the deceased has disclosed the said incident in the form of dying declaration before them. She has contended that P.W. No. 10 who has recorded dying declaration has produced it at Ex.65. She has contended that as per evidence of P.W. No. 1 - Vishnu an eyewitness who is examined at Ex.35 is the son of the deceased and appellant, has disclosed that he was present at the place of offence and his father - present appellant had given blows of leg of coat on the head of his mother deceased and due to that his mother has expired. She has contended that this witness has disclosed that at 12 O'clock dispute regarding meal took place and fatal blows were given by his father and, therefore, he rushed to his maternal grandmother's house. He has deposed that after giving fatal blow deceased ran away from the house and muddamal leg of the coat was identified by this witness. She has contended that in the result of evidence produced on record the prosecution has proved its case against the present appellant. She has contended that the

learned Judge has considered each and every aspect of the matter and has passed absolutely just and proper judgment. Therefore, the impugned judgment and order of conviction and sentence passed by the learned Judge requires to be confirmed.

12. She has contended that sufficient corroborative pieces of evidences are produced on record. She has contended that the prosecution, by leading sufficient evidence has proved the offence beyond reasonable doubt and learned Judge has rightly considered the case of the prosecution against the present appellant. She has, therefore, prayed to confirm the judgment and order of the learned Judge.

13. We have heard learned counsel for the respective parties. We have gone through the papers produced in the case. We have minutely perused evidence of the witnesses examined by the prosecution. As per the charge framed at Ex.5 the allegation is made against the present appellant that for preparing of meal some exchange of heated arguments between the appellant and deceased took place and resultantly in sudden provocation blows of leg of coat were given by accused on the head of the deceased. Shantaben P.W. No. 1 who is examined at Ex.7 has given complaint against present appellant and disclosed that when deceased was shifted to the hospital at that time she was unconscious and when she became conscious at that time she disclosed before her mother - present complainant that, when she was cooking meal at that time some quarrel took place with appellant for meal and her husband gave blows of leg of coat on her head and ran away from the place. She has further disclosed that from the leg of coat blood was found and muddamal is identified by her. In cross-examination it is disclosed that blood of the deceased was found on the cloth. Due to the poverty after 15 days deceased was brought to complainant's house and after 05 days she expired. It is also disclosed by this witness that even before doctor she has disclosed real fact. Place of panchnama Ex.10 is proved through oral version of P.W. No. 2 Naginbhai B. Vasava, who is examined at Ex.9. As per serological report produced at Ex.69 blood of the deceased of "O" group was found from leg of coat as well as from place of offence and it is supported by panchnama itself. The son of the deceased informed P.W. No. 5 - Dhuliben @ Kaliben Kalidas, who is examined at Ex.21 that his father has beaten leg of coat to his mother and ran away from the house. She has further disclosed that deceased has also made a statement to her that for the issue of cooking meal quarrel took place with her husband and her husband has given blows of leg of coat and runaway. P.W. No. 6 Dr. Lalitbhai Bhagubhai, who is examined at Ex.24 has disclosed following external and internal injuries were found on the body of the deceased;

"External Injuries :

(i) Healed wound over Rt. side of forehead size 2 cm. x 0.5 cm.

(ii) Healed wound over top of parietal region size 6 cm. x 0.5 cm.

(iii) Healed wound just below Rt. Ear size 2 cm. x 0.5 cm.

(iv) Rt. black eye.

Internal Injuries :

(a) Fracture of petrous,

(b) Fracture of Lt. Temporal bone,

(c) Fracture of parietal bone and

(d) Fracture of Rt. Zygomatic arch. Left wall of Rt. orbit greater wing of sphenoid & wall of Sphenoid sinus."

It is admitted by this witness that injuries which are found from the body of the deceased are possible with leg of the coat muddamal which was shown to him. P.W. No. 7 Dr. Nehaben, S.S.G. Hospital, Vadodara, who is examined at Ex.31 has disclosed that two injuries were found on the head of deceased. She has also deposed that eight fractures were found on the body of the deceased. Prosecution has examined star witness P.W. No. 8 Vishnubhai at Ex.35 who is son of the present appellant and deceased. This witness has specifically disclosed that quarrel for cooking meal took place between his father and mother and his father - present appellant gave blows of leg of coat on the head of his mother at 12 O'clock in noon and thereafter his father ran away from the house, at that time he was present in the house. He has further disclosed that thereafter he rushed to the house of the matrimonial grandmother and disclosed the said incident. P.W. No. 10 Head Constable - Sardarsinh Amarsinh, who is examined at Ex.39 has deposed that he visited hospital and prepared yadi to Executive Magistrate but at that time doctor endorsed that Dhuliben @ Kaliben Kalidas was unconscious. After treatment doctor disclosed that she was conscious. Dying declaration of the deceased was recorded by P.W. No. 10 on 24.3.2008, which fact emerges from the record. Though when deposed for the first time he did not mention about the same but when he was recalled, he has deposed about this fact. Even the dying declaration gets support from the evidence of the child witness. Even the doctors who conducted postmortem found fatal injuries and stated that those were sufficient enough to cause death of the deceased. As per evidence of both the doctors they have disclosed beyond reasonable doubt that more than two injuries on vital part, head of the deceased were found and those were ante-mortem injuries and these injuries are possible by muddamal leg of coat. In support of that prosecution has produced serological report and from the examination made by FSL blood of the deceased was found from the leg of the coat and that muddamal is identified by child witness P.W. No. 8 Vishnu. We have minutely perused oral version of the son of deceased Vishnu. It is said by the defence that this is a tutored witness and his evidence cannot be considered, but we have found evidence of this witness trustworthy. From perusal of evidence of the prosecution case we have found that this is not a case of sudden provocation. Looking to the injuries on the body of the deceased it shows that with intention

more than two blows of leg of coat were given by the appellant on the head of the deceased and in result of those fatal injuries deceased died and, therefore, ingredients of Section 302 of the Indian Penal Code are proved beyond reasonable doubt against present appellant. From the conduct of the appellant it is clear that after commission of offence he ran away from the place of offence.

14. In the decision of Apex Court in the case of Hiran Vs. State of Maharashtra, (2013) 3 ABR 772 : (2013) 2 AD 623 : (2013) CriLJ 2191 : (2013) 1 Crimes 291 : (2013) 2 JT 258 : (2013) 2 RCR(Criminal) 994 : (2013) 2 SCALE 141 : (2013) 12 SCC 586 : (2013) AIRSCW 2134 : (2013) 1 Supreme 748 , which pertains to reliability of uncorroborated dying declaration, circumstances and appreciation of voluntary and truthful evidence the conviction was confirmed. In the case of Acharaparambath Pradeepan and Another Vs. State of Kerala, (2007) CLT 872 Supp : (2006) 13 SCALE 600 : (2006) 10 SCR 1101 Supp , wherein it is held that, where a child witness understands the question put to him and gives rational answers, he is a competent witness and such evidence can be believed.

15. In the context of above, we have considered the conduct of the present appellant. Therefore, from the overall evidence produced on record it is prima facie proved beyond reasonable doubt that, the main ingredients of Section 302 of the Indian Penal Code are proved and defence which is taken by the present appellant cannot be considered in his favour. We are, thus, in full agreement with the reasons given and findings recorded by the trial Court while convicting the appellant - accused. In our view, the impugned judgment is just, legal and proper and requires no interference by this Court. Hence this appeal deserves to be dismissed.

16. In the result, the appeal is dismissed. The impugned judgment and order of conviction dated 30.06.2009 passed by the learned Principal Sessions Judge, Bharuch, in Sessions Case No. 71 of 2008, convicting the appellant - accused is hereby confirmed.

17. Record and proceedings, if any, be sent back to the trial Court concerned, forthwith.