

(2016) 01 GUJ CK 0164
In the Gujarat High Court

Case No : Criminal Appeal Nos. 316 of 2005 and 663 of 2006

Laxmiben

APPELLANT

Vs

The State of Gujarat and Others

RESPONDENT

Date of Decision : 22-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Penal Code, 1860 (IPC) — Section 201, Section 302, Section 34, Section 497

Citation : (2016) 01 GUJ CK 0164

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

Bench : Division Bench

Advocate : Gaurav K. Mehta, Advocate, for the Appellant; L.R. Pujari, APP, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—1. Challenge is made to the judgment and order dated 10.12.2004 passed by learned Additional Sessions Judge, 6th Fast Track Court, Veraval in Sessions Case No. 77 of 2003 in this appeal whereby learned Additional Sessions Judge has been pleased to convict the accused and imposed the sentence upon them to undergo life imprisonment and fine of Rs. 1000/- for the offences punishable under section 302 read with section 34 of IPC in default, to undergo further six months rigorous imprisonment and no separate sentence is pronounced for the offences punishable under sections 497, 201 read with section 34 of IPC.

2. The broad facts of the case are that accused No. 1 - Laxmiben was having illicit relation with accused No. 2 - Vira Mandan and husband - Valabhai Mayabhai of accused No. 1 was hindrance in illicit relation of accused No. 1 with accused No. 2 when the husband of accused No. 1 was sleeping in the cot before four months from 5.9.2003, by taking the advantage of the same, accused No. 2 caught hold the legs of Vala Maya and accused No. 1 Laxmiben inflicted blows with sickle on the stomach, chest and head and caused serious injuries and,

thereby killed Valabhai Mayabhai and so as to see that the offence may not surface, both the accused taken the dead body of the deceased in tractor and disposed of the same near seashore of Dhanser of village Manekpur and thereby destroyed the evidence of offence of murder and accordingly, the complaint was lodged before Una Police Station.

3. Therefore, FIR bearing CR No. I - 198 of 2003 came to be registered before the Una Police Station. In pursuance of the complaint, the Investigating Officer carried out the investigation and filed the chargesheet against the accused.

3.1 As the case was exclusively triable by the court of sessions, the same was committed to the Court of Sessions by learned Magistrate. The charge for the offences punishable under sections 302, 497, 201 read with section 34 of IPC was framed against the accused at Exh. 1. The accused pleaded not guilty to the charge and claimed to be tried. To prove the case against the accused, the prosecution has examined the following witnesses.

3.2 The prosecution has also produced the as many as 24 documentary evidences viz., Inquest Panchnama Exh. 14, Report regarding missing of the deceased Exh. 17, Letter written for Postmortem Exh. 24, Discovery panchnama Exh. 31, Map of scene of offence Exh. 40, Postmortem report of deceased Exh. 43, Complaint Exh. 56, Reports sent by the FSL Exhs.58, 59, 60, 61, 62 and 63 etc.

3.3 At the end of the trial, after recording the statement of the accused under section 313 of the Cr.P.C. and hearing the arguments on behalf of the prosecution and the defence, the trial Court delivered the judgment and order, as stated above.

3.4 Being aggrieved by the same, the appellants - original accused have preferred the aforesaid Criminal Appeal before this Court.

4. We have heard Mr. Mehta, learned counsel for the appellants and Mr. L.R. Pujari, learned APP for the State.

5. Mr. Mehta, learned counsel for the appellants has submitted that learned trial Judge has not properly appreciated the evidence on record which has resulted into miscarriage of justice. He contended that evidence of child witness at Exh. 11 was not believable as the medical evidence as per the postmortem report is contrary to the deposition of the child witness. In his submission, therefore, the entire prosecution case is based on the evidence of child witness which is not believable as there are some discrepancies in his evidence. He further submitted that in fact, this is a case of no evidence and the evidence which has come on record is not direct evidence as the dead body was found after four months. In this peculiar set of circumstances, the present evidence is not supporting the case of the prosecution and, therefore, in his submission, the prosecution has failed to prove the case against the appellants. Lastly, he requested this Court to allow these appeals by quashing and setting aside the conviction recorded by

learned trial Judge.

6. On the other-hand, Mr. L.R. Pujari, learned APP for the State has taken us through the evidences of the witnesses on record and contended that the decision taken by learned trial Court is just and proper and no interference is called for. He contended that in view of the observations made and finding arrived at by the trial Court in paragraphs 27, 28 and 29 and taking into consideration the evidence on record, more particularly, evidence of PW 1 Bhavesh at Exh. 11 who has seen the incident in question and extra judicial confession of accused No. 1 - the wife of the deceased before the Sarpanch as well as other witnesses which clearly shows that the crime in question is committed by the present appellants and they have tried to destroy the evidence because the dead body was found at the instance of accused No. 1 who has shown the place where they have tried to dispose of the dead body.

7. Mr. Pujari, learned APP has relied upon the decision in the case of Trimukh Maroti Kirkan v. State of Maharashtra, reported in , (2006) 10 SCC 681. Relying upon the decision in the case of Trimukh Maroti Kirkan (supra) Mr. Pujari further contended that the crime in question is committed in the matrimonial house of appellant No. 1 with the help of appellant No. 2 and in such circumstances, the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice and it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence is insisted upon. Lastly, he requested this Court to dismiss the present appeals.

8. We have considered the ratio laid down in the decision in the case of Trimukh Maroti Kirkan (supra) and taking into consideration the evidence of PW 1 Bhavesh though minor who has deposed at Exh. 11 that in the night, he was sleeping in the adjoining room and he has heard the voice of his father and seen the mother injuring his father with sharp edge weapon and the same was stained with blood. He has identified both the accused in the Court and also the weapon which was used in the crime in question. Taking into consideration the entire evidence on record, we believe that the evidence of the child is trustworthy and can be relied upon. It is also pertinent to be mentioned here that the crime in question is committed in the matrimonial house of appellant No. 1 and the fact remains that appellant No. 1 even after committing murder, remained silent and after four months, she has admitted before the Sarpanch and in para 3, Sarpanch has stated as under.

"Before a week of this incident, accused Laxmiben arrived at my home and while crying, she has stated that she has done wrong, she and Vira Mandal have committed murder of her husband Vala through sickle and his dead body has been thrown in the small well of sea near Manekpur and she has told regarding this fact to Mayabhai and Gabhrubhai."

9. Taking into consideration the documentary as well as oral evidence, we are of

the considered opinion that the prosecution has successfully prove the case against the appellants - original accused beyond reasonable doubt as the accused have committed the murder and admittedly, the offence took place in the matrimonial house of accused No. 1 and, there is no explanation for the same and hence, it is a strong circumstance which indicates that the appellants are responsible for the commission of crime. It would be fruitful to mention at this stage that a judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties and hence, they are required to be convicted for the offences punishable under sections 302, 497, 201 read with section 34 of IPC. We make it clear that life is not life and hence, the accused are required to be directed to surrender before the jail authority within ten weeks.

10. In view of the aforesaid discussion, the Criminal Appeal is dismissed. The impugned judgment and order dated 10.12.2004 passed by Additional Sessions Judge, 6th Fast Track Court, Veraval in Sessions Case No. 77 of 2003 is confirmed. Bail bond, if any, of the accused stands cancelled. The accused shall surrender before the jail authorities within a period of ten weeks from today to serve out the remaining period of sentence. Record and Proceedings, if lying here, be sent back to the concerned trial Court forthwith.