

(2011) 02 GUJ CK 0013
In the Gujarat High Court
Case No : Criminal Appeal No. 1427 of 2005

Luhar Hasanbhai Karimbhai

APPELLANT

Vs

The State of Gujarat

RESPONDENT

Date of Decision : 28-02-2011

Acts Referred:

Atrocity Act — Section 3(1)(10), 3(2)(5)
Penal Code, 1860 (IPC) — Section 300, 302, 304

Citation : (2011) 3 GLH 418

Hon'ble Judges : R.M. Chhaya, J;A.L. Dave, J

Bench : Division Bench

Advocate : P.M. Lakhani, for the Appellant; D.C. Sejpal, App, for the Respondent

Judgement

R.M. Chhaya, J.—The present appeal arises out of the judgment and order of conviction and sentence passed in Special Atrocity Case No. 79 of 1999 by the learned Additional Sessions Judge, Mehsana dated 27.02.2001 convicting the present Appellant accused u/s 302 of the I.P. Code and Sections 3(1)(x) and 3(2) (v) of the Atrocity Act for life imprisonment and fine of Rs. 1,000/- and in default, S.I. for 3 months for both the offences.

2. The facts arising in this appeal are as under:

2.1 That the Appellant and deceased Pushpaben were ordinarily residing at Kalol in area known as Gai no Tekro, Batris quarters. Pushpaben was staying along with her husband Rajubhai Bhikhabhai Raval. Her ex-husband Amratbhai as well as her son Dharmendra were staying in the same locality i.e. to say in the next adjoining house. The deceased Pushpaben had an elder son named, Jitendra who during the period of incident in question was studying at Village Ambaliyasan. On 14.01.1999, on the day of Uttarayan, elder son of the deceased, named Jitendra brought kite of the son of the accused. Because of this incident, there was some altercation between the deceased Pushpaben and the accused as the accused insulted the son Jitendra. Both the accused and the deceased Pushpaben registered different complaints before the Police.

2.2 It is the case of the prosecution that because of the earlier incident on 28.01.1999 at about 10:00 in the morning, while deceased Pushpaben was at her house and her ex-husband Amratbhai and her husband Rajubhai Bhikhabhai Raval were out on their job, the accused went to the house of the deceased Pushpaben and initiated quarrel. It is further the case of the prosecution that immediately thereafter the accused came with a dagger in the rear side of deceased's house, near the drainage line and assaulted deceased Pushpaben with the said dagger. It is the case of the prosecution that the deceased Pushpaben received multiple injuries and meanwhile, younger son of the deceased, named Dharmendra went to call husband of the deceased Pushpaben Rajubhai Bhikhabhai Raval. However, after assaulting the deceased Pushpaben, the accused ran away from the scene of offence. It is further the case of prosecution that, Rajubhai Bhikhabhai Raval went to the Police Station, as deceased Pushpaben had succumbed to the injuries. First Information Report was lodged with Kalol City Police Station on the same day. It is the case of the prosecution that the accused surrendered before the Police on the same day. The investigating agency investigated the offence and filed charge-sheet before the learned JMFC, Kalol and thereafter, the case was committed to the Court of Sessions Judge, Mehsana as Special Atrocity Case No. 79 of 1999, as the offences were exclusively triable by the Sessions Court.

2.3 The learned Sessions Court framed charge at Exh.2 to which the accused pleaded not guilty. The learned Sessions Court, after recording of evidence and full-fledged trial, was pleased to pass judgment and order of conviction convicting the accused u/s 302 of the I.P. Code and Sections 3(1)(x) and 3(2)(v) of the Atrocity Act for life imprisonment and fine of Rs. 1,000/- and in default, S.I. for 3 months for both the offences. Being aggrieved by the said judgment and order of conviction and sentence, the accused has filed the present appeal.

3. We have heard Shri P.M. Lakhani, learned advocate for the accused Appellant and Shri D.C. Sejpal, learned APP for the State.

4. Shri Lakhani for the accused Appellant has taken us particularly to the oral testimony of Rajubhai Bhikhabhai Raval who is an eye-witness, oral testimony of PW4 Dharmendra alias Kalubhai Amratbhai, who is a child witness as well as other relevant evidence on record.

5. Shri Lakhani for the accused Appellant has submitted that PW2 is only solitary eye-witness, as PW4 Dharmendra has turned hostile. It is further submitted by Shri Lakhani that even if the evidence of PW2 is taken at its face value, it does not inspire any confidence and his presence at the scene of offence is doubtful and his version is also not believable. Shri Lakhani has further pointed out that except oral testimony of PW2, there is no evidence on record to connect the accused with the offence and the prosecution has, therefore, not been able to prove the case against the accused. Shri Lakhani has further relied upon the fact that the Panch witnesses of weapons and cloth have turned hostile and no reliance can be put upon the evidence and hence, it is submitted that the

prosecution has not been able to even prove the said aspect. It is, therefore, submitted by Shri Lakhani that the accused should be given benefit of doubt and the judgment and order of conviction u/s 302 of the I.P. Code as well as Sections 3(1)(x) and 3(2)(v) of the Atrocity Act deserves to be set aside. Lastly, it is submitted by Shri Lakhani that taking into consideration the evidence on record and totality of facts, there was no intention on the part of the accused to cause death of the deceased and he has also further argued that taking into consideration the medical evidence and more particularly, the injury upon the person of deceased, there are no such injuries which would result into death and therefore, the case of the accused would fall within the 4th exception of Section 300. Shri Lakhani, therefore, urged that the accused Appellant has not committed the offence of murder, but at the most be held liable for culpable homicide not amounting to murder as contemplated u/s 304 Part-II.

6. Shri D.C. Sejpal, learned APP for the State has opposed this appeal. It is submitted on behalf of the State that the prosecution has been able to prove the guilt of the accused. Shri Sejpal has submitted that the deceased has suffered multiple incised wounds as indicated in the medical evidence and taking into consideration the cause of death as per the medical evidence, the accused has inflicted multiple blows with deadly weapon like dagger and the intention on the part of the accused was only to commit murder knowing fully that the same would result into death in ordinary course of nature. It is further submitted that there is complete corroboration of evidence on record and more particularly, the Forensic Science Laboratory report, wherein it is clearly indicated that the clothes of the accused and the dagger reflected the presence of human blood group "B", which matches with the human blood group of deceased Pushpaben, which is also of group "B". It is also pointed by Shri Sejpal that coupled with the fact that there is no injury upon the person of the deceased and the fact that the accused himself surrendered before the Police Station immediately after occurrence of the incident and his active involvement proved, coupled with the fact that there was enmity between the deceased and the accused because of earlier incident which took place 14 days ago, the learned Sessions Judge has, therefore, rightly believed the case of prosecution and the judgment and order of conviction is, therefore, proper and the appeal deserves to be dismissed.

7. We have gone through the evidence on record and have also perused the impugned judgment and order.

8. At the outset, it is worthwhile to note, that except the fact, that deceased Pushpaben belonged to Scheduled Caste, there is no evidence on record worth mentioning that the offence under Sections 3(1)(x) and 3(2)(v) of the Atrocity Act is committed by the accused. Even in statement u/s 313, the fact has come to light that the accused and the deceased were staying at a distance of just two houses i.e. they were next door neighbours and the accused was well aware that deceased Pushpaben belonged to Scheduled Caste and therefore, the accused attacked Pushpaben with a dagger and has thereby committed offence as

contemplated under Sections 3(1)(x) and 3(2)(v) of the Atrocity Act. Except this, there is no evidence on record as aforesaid. We find that there is no evidence on this aspect and there is no intention or mens rea found on evidence relating to the allegations made under the Atrocity Act. The prosecution has thus not been able to prove the offence u/s 3(1)(x) and 3(2)(v) of the Atrocity Act.

9. Taking into consideration the oral testimony of PW2 Rajubhai Bhikhabhai Raval who is an eye-witness, has clearly stated as to how the incident has occurred, we find no reason to disbelieve the account of incident given by eye-witness PW2. Similarly, even though PW4 is a child witness, aged about 15 years old, who has been declared hostile in the cross-examination, PW4 has categorically stated that in his statement before the Police, he has narrated the fact that at about 8 O'clock on the date of incident, when PW2 was near Anand Park, deceased Pushpaben who happens to be the mother, was assaulted by the accused at about 10:00 a.m. with a dagger and has further narrated what is stated by eye-witness PW2. It is further noteworthy that similarly PW10, Exh.30, the Investigating Officer Kanjibhai Mohanbhai Desai has also clearly stated in his deposition that even similar statement was given by PW8 Ruksana Yakubbbhai who is the next door neighbour of the accused, even though the said witness has turned hostile.

10. PW1 Dr. Pravinbhai Gandabhai Patel, who performed postmortem, has narrated the following injuries:

- (1) I/w. 7 cm x 3 cm x 1 cm at Rt. Janee Joint
- (2) I/w. 2 cm x 1 cm x ? cm at Rt. Index finger.
- (3) I/w. 12 cm x 2 cm x ? cm at medial surface of Rt. arm
- (4) I/w. 5 cm x 3 cm x 2 cm at just below Rt. elbow region. Bone cutting (ulna)
- (5) I/w. 2 cm x 1 cm x ? cm upper part of Rt. buttock
- (6) I/w. 5 cm x 3 cm x 3 cm Lf. wrist joint. Lower end of ulna cutting.
- (7) I/w. 2 cm x 1 cm x 1 cm at Lf. temporal region Depressed palpable # present
- (8) I/w. 5 cm x 1 cm x ? cm at Rt. side of frontal region.
- (9) I/w. 2 cm x 1 cm x ? cm at Rt. temporal region.
- (10) I/w. 3 cm x 1 cm x ? cm at Rt. occipital region.
- (11) I/w. 4 cm x 1 cm x ? cm at Lf. palm at Ring and middle finger.
- (12) I/w. 9 cm x 2 cm x ? cm just behind Rt. ear on Rt. occipital region.
- (13) I/w. 1 cm x ? cm X ? cm at cheen.
- (14) I/w. 3 cm x 2 cm x 2 cm on Lf. side of back.

11. On bare reading of the injuries, the contention raised by Shri Lakhani,

learned advocate for the accused Appellant that the injuries are not on vital part of the body of the deceased is incorrect. The injuries indicate that the deceased Pushpaben succumbed to such injuries because of multiple injuries caused by sharp cutting instrument like dagger and medical evidence clearly show that the cause of death of deceased Pushpaben Rajubhai Chamar was cardio-respiratory arrest due to haemorrhagic and neurogenic shock due to multiple injury with sharp cutting instrument.

The injuries clearly indicate that the weapon of offence, the part of the body chosen to inflict such injuries and the nature and gravity thereof coupled with the circumstances in which they were caused clearly establish that the requisite ingredients of clause Thirdly of Section 300 of the I.P. Code and the injuries were caused by the accused with an intention and knowledge that the same would result into death in ordinary course of nature and therefore, the learned Sessions Judge has rightly convicted the accused u/s 302 of the I.P. Code.

12. The incident in question took place on 28.01.1999 and earlier on 14.01.1999, there was quarrel between deceased Pushpaben and the accused which clearly bornes out from Exhs. 32 and 33 as well as the oral testimony of PW2, PW4 and even PW11 Hamirji Rajpoot, A.S.I. of Kalol Police Station. Cumulatively, therefore, the prosecution has been able to prove the motive, intention and involvement of the accused in the instant case.

13. The evidence in form of serological report at Exh.11 clearly bornes out the fact that the soil collected from the scene of offence, dagger, Bush-shirt, Pant of the accused and Sweater as well as other clothes of deceased Pushpaben reveals human blood group "B" which matches with blood group of deceased Pushpaben, which was human blood group "B". Thus, the prosecution has been able to corroborate the evidence of PW2 in particular and succeeded in establishing guilt of the accused. It is also worthwhile to note that the accused has not explained the presence of blood upon his clothes, namely, Bush-shirt and Pant and as rightly pointed by Shri Sejpai, learned APP for the State, no injury was found upon the person of the deceased. On consideration of the evidence on record, therefore, the prosecution has been able to prove the charges levelled against the Appellant and the learned Sessions Judge has rightly convicted the accused and has sentenced the accused u/s 302 of the I.P. Code.

14. The appeal is, therefore, partly allowed. The impugned judgment and order dated 27.02.2001 passed by the learned Additional Sessions Judge, Mehsana in Special Atrocity Case No. 79 of 1999 is confirmed in so far as it convicts and imposes sentence on the Appellantaccused for the offence punishable u/s 302 of the I.P. Code. So far as the conviction recorded and the sentence imposed by the learned Additional Sessions Judge, Mehsana against the Appellant for the offence punishable under Sections 3(1)(x) and 3(2)(v) of the Atrocity Act is concerned, the impugned judgment and order is set aside.