

(2016) 02 GUJ CK 0176
In the Gujarat High Court
Case No : Criminal Appeal No. 2215 of 2008

Maheshbhai

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 23-02-2016

Acts Referred:

Constitution of India, 1950 — Article 161, Article 72
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302

Citation : (2016) 02 GUJ CK 0176

Hon'ble Judges : K.S. Jhaveri and G.B. Shah, JJ.

Bench : Division Bench

Advocate : P.K. Shukla, Advocate, for the Appellant; H.S. Soni, Addl. Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—1. Having been sentenced to life imprisonment and having been ordered to pay fine of Rs. 5000/- in default to undergo simple imprisonment for one month for the offence under section 302 of Indian Penal Code and having been sentenced to undergo rigorous imprisonment for ten years and having been ordered to pay fine of Rs. 500/- in default simple imprisonment for one month by impugned judgement and order dated 28.03.2007 passed by the Additional Sessions Judge, FTC, Deesa in Sessions Case No. 92 of 2006, the appellant, being aggrieved, is before this Court questioning the impugned judgment and order.

2. The case of the prosecution as emanating from the records is as under:

"2.1 On 01.03.2006, the deceased had gone to graze cattle but did not return home by 06.30 pm. The complainant - brother of deceased and nephew of complainant went in search of the deceased but he could not be found. A missing complaint was accordingly lodged. The dead body of the deceased was subsequently found and investigation was carried out and necessary panchnamas

were drawn and the police arrested the appellant on the basis of proof available. Thereafter, charge sheet was filed against the present appellant. The case was committed to the Court of Sessions. The trial was initiated against the accused and during the course of trial the accused pleaded "not guilty" to the charge and his defence was one of total denial.

2.2 The prosecution examined the following witnesses whose evidence were read before us by learned advocate for both the sides:

2.3 The prosecution also exhibited the following documents which were perused by us during the course of hearing:

2.4 At the end of the trial and after recording the statement of the accused under section 313 of Cr.P.C., and hearing arguments on behalf of prosecution and the defence, the learned Additional Sessions Judge convicted the appellant as mentioned aforesaid. Being aggrieved by and dissatisfied with the aforesaid judgement and order passed by the Sessions Court the appellant has preferred the present appeal."

3. Mr. P.K. Shukla, learned advocate appearing for the appellant, submitted that there is nothing on record to establish that the accused is involved in this case except the complaint. He submitted that in absence of any eye witness in the present case, the trial court has erred in convicting the appellant on the basis of circumstantial evidence when the chain has not been completed by the prosecution. He contended that there are no eye witnesses to the alleged incident and that the trial court has wrongly based conviction on the basis of available ocular and documentary evidence. He submitted that the medical evidence does not corroborate the case of the prosecution.

4. Mr. H.S. Soni, learned APP, however, submitted that the trial court has given cogent reasons for sustaining the conviction under section 302 of Indian Penal Code and this court may not interfere in this appeal. It is submitted that the trial court has based the conviction not only on the evidence of witnesses but also considered entire circumstances of the case and the facts which are proved by cogent evidence. It is submitted that in view of the post mortem report and the cause of death, the possibility of accidental death is clearly ruled out.

5. We have considered the case from all angles. The appellant has failed to discharge the duty cast upon him to show his absence from the scene of offence and that he was not the perpetrator of the alleged offence. The case is based on circumstantial evidence in the absence of any eye witness. There is no direct evidence implicating the appellant. It is trite that all the proved circumstances must provide a complete chain, no link of which must be missing and they must unequivocally point to the guilt of the accused and exclude any hypothesis consistent with his innocence.

5.1 As per the latest decision of the Apex Court, we have appreciated, re-appreciated and re-evaluated the evidence led before the trial court in its

entirety but we are unable to persuade ourselves to take a different view than the one taken by the trial court. P.W. 10, 11, 12 & 14 have supported the case of the prosecution. From the evidence of P.W. 10 & 11, it is borne out that the accused tried to sell the buffaloes to them. However, they did not buy the buffaloes. P.W. 12 has stated that he had seen accused No. 1 on the day the deceased went missing on the road towards Zerda village. He has stated that he had also spotted the deceased going to the field to graze his buffaloes. P.W. 14 has also supported the case of the prosecution.

6. It is true that the nature of injuries do not suggest the use of muddamal weapon and that the deceased was not killed by way of use of knife. However, it is pertinent to note that blood stains were found on the said knife which matched with the blood group of deceased. The trial court has observed that it could have been possible that during the scuffle, when the deceased was injured on the head, the blood would have been smeared on the knife somehow. What is important is that the knife was recovered at the instance of the accused. The accused could not explain the blood stains on the knife. There was tremendous loss of blood from the deceased's head due to the severe injury caused to him. The blood found from the scene of offence also matched with the blood group of the deceased. The computerised mobile statement produced on record also substantiates the case of the prosecution. The same corroborates the evidence of P.W. 10 & 11.

7. The evidences on record clinchingly prove the guilt of the accused and the same are even reiterated in the judgement of the trial court. The evidence of P.W. 10, P.W.11, P.W. 12, & P.W. 14 inspires confidence. The accused is not in a position to show that these witnesses have given the evidence with an ulterior motive. In fact their evidence is supported by the documentary evidence. The ocular evidence if read together with the medical evidence, it is clear that it was not an accidental death.

8. In the present case, the incriminating nature of evidence is proved to the hilt. In the present case, considering the evidence of witnesses as well as the medical evidence, we are of the opinion that the prosecution has proved the fact that the deceased died a homicidal death beyond reasonable doubt. Learned advocate for the appellant is not in a position to point out any cogent evidence or circumstance so as to enable this Court to take a view contrary to the one taken by the trial court. The trial court has considering all these facts convicted the accused under section 302 of Indian Penal Code which is just and proper. We, therefore, do not see any reason for interference in the appeal. The prosecution has been able to prove the case against the appellant-accused and therefore we see no reason to interfere.

9. However, in a recent decision of the Apex Court in the case of Bhaikon @ Bakul Borah v. State of Assam reported in , JT 2013 (10) SC 373 has held as under:

"15. This Court, in a series of decisions has held that life imprisonment means imprisonment for whole of life subject to the remission power granted under Articles 72 and 161 of the Constitution of India. [Vide Life Convict @ Khoka Prasanta Sen v. B.K. Srivastava & Ors. , (2013) 3 SCC 425, Mohinder Singh v. State of Punjab, , (2013) 3 SCC 294, Sangeet and Anr. v. State of Haryana , (2013) 2 SCC 452, Rameshbhai Chandubhai Rathod (2) v. State of Gujarat , (2011) 2 SCC 764, Chhote Lal v. State of Madhya Pradesh , (2011) 8 SCR 239, Mulla and Another v. State of Uttar Pradesh , (2010) 3 SCC 508, Maru Ram v. Union of India & Ors. , (1981) 1 SCC 107, State of Madhya Pradesh v. Ratan Singh & Others , (1976) 3 SCC 470 and Gopal Vinayak Godse v. State of Maharashtra , AIR 1961 SC 600].

16. In view of the clear decisions over decades, the argument of learned senior counsel for the appellant-accused is unsustainable, at the same time, we are not restricting the power of executive as provided in the Constitution of India. For adequate reasons, it is for the said authorities to exercise their power in an appropriate case."

10. In the premises aforesaid, appeal is hereby dismissed. The judgement and order dated 28.03.2007 passed by the Additional Sessions Judge, Fast Track Court, Deesa in Sessions Case No. 92 of 2006 is confirmed. However, it is clarified that after the original accused serves sentence for 14 years his case may be considered for remission as it is not that life imprisonment should be treated till last breath and the case of the original accused may be reviewed by the appropriate authority considering the decision of Apex Court in the case of Bhaikon @ Bakul Borah (supra). The period of sentence already undergone shall be considered for remission and set off in accordance with law. The accused shall surrender before the concerned authority within a period of twelve weeks from today to serve out the remaining period of sentence. R & P to be sent back forthwith.