
(2012) 05 GUJ CK 0030
In the Gujarat High Court
Case No : Criminal Appeal No. 847 of 2006

Manharbhai Rupsingbhai Vasava	Vs	APPELLANT
State of Gujarat and 1		RESPONDENT

Date of Decision : 11-05-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 209, 313, 378(2)
Penal Code, 1860 (IPC) — Section 300, 302, 304, 323

Citation : (2012) 05 GUJ CK 0030

Hon'ble Judges : N.V. Anjaria, J;A.L. Dave, J

Bench : Division Bench

Advocate : Mrudulmbarots, for the Appellant; R.C. Kodekar APP for
Opponent(s) : 1, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice N.V. Anjaria

1. The appellant, now aged 31, was tried in Sessions Case No.127 of 2005 for the offence of committing murder of one Ravindrabhai and came to be convicted for the offences punishable under sections 302 and 323 of the Indian Penal Code, 1860 ('IPC' for sake of brevity) by judgment and order dated 18.04.2006 delivered by Additional Sessions Judge, Fast Track Court, Bharuch. For the offence punishable u/s 302, IPC, the appellant was sentenced to life imprisonment and fine of Rs.5000/-and in default of payment of fine to undergo simple imprisonment for further three months. In respect of conviction for offence u/s 323, IPC, he was sentenced to rigorous imprisonment for one year and a fine of Rs.1000/-and in default of payment of fine to undergo simple imprisonment for further one month. All the sentences were directed to run concurrently. The incident took place on 22.08.2005 at around 10.00 - 10.30 a.m. in the morning at a place 50 feet away near Shiludi Chowkdi opposite the road leading to Godrej Company in the vicinity of village Valiya, Taluka Valiya, District Bharuch. The first informant Shakuben Ravindrabhai Vasava (PW-1), the

wife of the deceased lodged the complaint (Exh.12). The prosecution case based on that complaint was that on the day of incident at 10.00 a.m. in the morning PW-1 and her husband Ravindrabhai were sitting at tea stall of one Dudhiabhai near their house. At that time the appellant accused came and told the deceased as to why he was behaving high-handedly in that area. Upon the deceased denying the allegation, the accused scuffled with him. After the scuffle, he went away towards roadside. Thereafter when the complainant (PW-1) and her husband were going towards Valiya Police Station to lodge a complaint, and had reached near Shiludi Chowkdi, the accused came with a long wooden stick of Nilgiri tree and gave 2-3 blows on the forehead of the deceased. Interception by the complainant resulted into injury on her right arm. Her husband fell down in bleeding condition. When she raised shouts, Hanumanbhai Kalubhai Vasava, Dineshbhai Lalubhai Vasava and Lalubhai Vasava arrived at the scene from nearby. The injured was taken to hospital in a rickshaw where he was given first aid and upon medical advice he was thereafter taken to Bharuch Civil Hospital in an unconscious state where the injured succumbed to his injuries at around 1.00 p.m.

2.The police registered First Information Report at 15.30 p.m. on 22.08.2005 and the offence was investigated. As sufficient material was found, charge sheet was presented before the learned Judicial Magistrate First Class, Valiya, who committed the case to the court of sessions at Bharuch u/s 209 of Criminal Procedure Code, 1973, as the offences were triable exclusively by the Sessions Court. The accused was charged (Exh.4) as per the charge framed by the Special Judge, Fast Track Court No.5, Bharuch Camp, Ankleshwar and was tried in Sessions Case No.127 of 2005. In course of trial the prosecution examined fourteen witnesses. The documentary evidence was led. The trial court recorded further statement of the accused u/s 313 of the Cr.P.C. when evidence was over. The trial was culminated into the judgment and order of conviction and sentence which is impugned in the present appeal preferred u/s 378(2) of Cr.P.C.

2.1. Looking into the evidence on record of the trial court, Shakuben (PW-1), the complainant and wife of the deceased deposed that her husband and the accused had a heated altercation and thereupon had a scuffle between the two took place at 10.00 a.m. on the day of incident when they were at the tea stall of Dudhiabhai. The accused thereafter attacked her husband with a stick of Nilgiri tree hitting for 5-6 times on his forehead of her husband when they were on way to go to file a complaint against him. She also suffered injuries on her right arm in the process. After the assault her husband fell down in bleeding condition. Lataben Vasava (PW-4, Exh.28) who was daughter of PW-1 and Sanjaybhai (PW-5, Exh.29) husband of PW-4 were examined. PW-4 and PW-5 deposed inter alia that on the day of incident they were in their house and saw the accused having arrived at Dudhiabhai's tea stall where Shakuben (PW-1) and the deceased were also there. The accused picked up a quarrel and there was a scuffle. Thereafter when mother Shakuben and deceased father were going to the police, the accused was seen to have come back and assaulted the deceased

with wooden stick. The victim fell down on the ground and ultimately died. PW-1, PW-4, PW-5 and PW-7 deposed consistent about the incident. Their evidence was unimpeached and established the occurrence of the incident. Babubhai Raviabhai Vasava (PW-8, Exh.32) too stated that accused Manharbhai and the deceased Ravindrabhai had a scuffle and soon thereafter took place the incident of attack by the accused.

3. Inquest panchnama was recorded at 14.30 hours (Exh.15) by panchas Rasikbhai (PW-9, Exh.34) and Dineshbhai (PW-10, Exh.39) who turned hostile. Panchnama of seizure of clothes of the deceased (Exh.16) show that one parrot green coloured shirt, white pant and a white banian also having stains of blood were recovered. The panchas (PW-9 and PW-10), turned hostile. Panchnama of place of incident (Exh.24) was recorded by Mukeshbhai (PW-2, Exh.23) and Roopsingh Vasava (PW-3, Exh.27), who too became hostile. As against the hostile panch witnesses, the investigating officer Bhagabhai Ranjitsinh Vasava (PW-14, Exh.50) gave his evidence that the panchnamas (Exh.15, Exh.24 and Exh.35) were prepared by the respective panchas and the contents were correctly and properly recorded. The muddamal articles were duly sent to Forensic Science Laboratory under his signature. He further deposed that Ashok @ Hasubhai Kalubhai (PW-6) and Dineshbhai Rambhai (PW-8) had stated in the statement given to him that accused had rushed to PW-1 when the deceased and his wife were going to police station and attacked the deceased Ravindrabhai near Shiludi Chowkdi, little away from Godrej Company with Nilgiri stick and had run away. These facts were denied by the hostile witnesses in their evidence.

3.1. Dr. Jaykant Prasad Sinha PW-11, Exh.14) who had conducted postmortem gave his oral evidence and described the injuries on the person of the deceased which he had stated against column No.17 in the postmortem report (Exh.41). According to his opinion, in the report (Exh.41) the death occurred due to shock and due to cravio-cerebral injuries/hemorrhage. The injuries noted by him in his postmortem report were as follows:

- (1) C.L.W. Obliquely tnt about 2 Cm. X 1 Cm. Just above and medial side of Rt. Eyebrow Red colour blood clot tnt.
- (2) CLW about 2 Cm X 1 Cm longitudinal. Just above the left eye brow. Red colour Bl. Clot tnt.
- (3) Dark bruish colour of left upper and lower eyelid tnt.
- (4) Bruise mark about 10 Cm X 3 Cm. Transversely from lateral to Medial at the anterior aspect of the left shoulder. Red Colour blood clot tnt.
- (5) Blood clot at Rt. Angle of mouth, exit from mouth.
- (6) Depressed # about 8 Cm long X 1/4 Cm. From lateral to Medial at the left tempora region to the Rt. Orbital crest.
- (7) Depressed # about 3 Cm. X 2 Cm. At left frontal bone."

3.2. The Forensic Science Laboratory report (Exh.51) showed that the group of blood found on the muddammal, the samples of soil collected from the place of incident, the clothes of the deceased and the weapon articles was same as that of the deceased.

3.3. On the above set of evidence on record, the trial court concluded that the offence of murder u/s 300 was established as the accused acted with intention to kill and the injuries were sufficient in ordinary course of nature to cause death.

4. Having remained unsuccessful to discredit evidence on record showing commission of crime by the appellant, arguing for the appellant, learned advocate Mr. Mrudul Barot assailed the conviction recorded by the trial court. It was submitted by him that even if the involvement of accused in the incident was to be presumed, the crime committed by the accused would fall u/s 304 and not u/s 302 of IPC. It was submitted that there was ample evidence to suggest that the assault by the accused on the deceased was preceded by a scuffle between the two at Dudhiabhai's tea stall, and that the accused came back to assault the victim which was not a premeditated act. He submitted that the accused was of young age of 25 years when the incident took place and being a young blood it could be safely inferred that he acted in a spur without any intention to kill. It was therefore submitted that Exception 4 of section 300 would apply and was u/s 304, Part-II, IPC. Learned advocate for the appellant relied on decision of the Supreme Court in Sukhbir Singh v. State of Haryana (2002) 2 GLH 213.

5. On the other hand learned A.P.P. Mr. R.C. Kodekar submitted that it was the way in which the accused came back from behind when PW-1 and her husband, the deceased were going to police his act was premeditated. assault, the act was pre-meditated. He submitted that the blows of the stick were given on the forehead and looking to the nature of injuries and cause of death as per the medical opinion, the act on the part of the accused constituted offence of murder only u/s 300 IPC He accordingly supported the conviction and sentence recorded by the trial court.

5.1. This court having gone through the evidence on record, the question of involvement of the accused in the incident of homicidal death was proved beyond doubt from the evidence of PW-1, PW-4 and PW-5 who were the eye witnesses. Their version on the events in course of the incident was consistent. The offence was proved on the basis of ocular evidence read with postmortem report (Exh.41), the evidence of doctor (Exh.40) and the Forensic Science Laboratory report (exh.51). The question that remains to be answered is whether the evidence committed by the accused amounted murder or a culpable homicide not amounting to murder. In other words whether the offence to be punishable u/s 302 IPC or it was one which could fall under the cover of section 304 of IPC.

5.2. From the critical analysis of the evidence on record, certain eye catching aspects surfaced. Firstly, it was shown that initially a scuffle took place between the accused and the deceased. The accused commented to scold the deceased

that he was behaving in high-handed manner in the area and was bullying the people. The deceased denied the charge and the scuffle ensued. The taking place of a scuffle was proved by the evidence of all the eye witnesses whose evidence was consistent and credible on the aspect. Even the panch witnesses who had seen the incident initially deposed in their examination in chief about the scuffle even as they were declared hostile. Their evidence on that count could aid as corroborative evidence for that limited purpose. In the second place, concededly, the accused did not carry any weapon initially when he had gone to the deceased at Dudhiabhai's tea stall where he started a quarrel and was engaged in a scuffle. Thirdly, the circumstance and the course of events showed that the act of the accused in chasing the deceased and his wife PW-1 and assaulting the deceased with a Nilgiri stick was guided by the heat generated under the scuffle in course of same event and it was a fall-out of the quarrel that took place at Budhiyabhai's tea shop.

6. In Sukhbir Singh (supra) the Supreme Court observed that in order to avail the benefit of Exception 4 to section 300, the defence is required to probabalise that the offence was committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and the offender had not taken any undue advantage and had not acted in a cruel or unusual manner. It was observed:

The Exception is based upon the principle that in the absence of pre-meditation and on account of total deprivation of self-control but on account of heat of passion, the offence was committed which, normally man of sober urges would not resort to. Sudden fight, though not defined under the Act, implies mutual provocation. It has been held by courts that a fight is not per se palliating circumstance and only unpre-meditated fight as such. The time gap between quarrel and the fight is an important consideration to decide the applicability of the incident. If there intervenes a sufficient time for passion to subside, giving the accused time to come to normalcy and the fight takes place thereafter, the killing would be murder but if the time gap is not sufficient, the accused may be held entitled to the benefit of this Exception.... After the injuries were inflicted and the injured had fallen down, the appellant is not shown to have inflicted any other injury upon his person when he was in a helpless position.

6.1. The facts before the Supreme Court in Sukhbir Singh (Supra) were that the accused Subkbir had abused Lachhman who gave him two slaps. The said accused thereafter went to his home after stating that he would teach him a lesson for the slaps which had been given to him. The accused after sometime, along with other accused persons, came at the spot and committed crime by giving two thrust blows with weapon Bhala with which he had armed himself on the upper right portion of the chest of the deceased Lachhman. The Supreme Court held that the offence was one falling under canopy of section 304 of IPC.

6.2. The Supreme Court observed in that case further that all fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of not availing the benefit of Exception 4 to section 300 IPC. In the present case

weapon was wooden stick of a tree which was hit on the head thrice as per the evidence of witnesses. The nature of those injuries as per medical evidence was serious. It was described by PW-11 to be of the kind of the nature by which the death of the person was likely. Even as the injuries inflicted could be termed as serious, while availing benefit of Exception 4 to the accused it is to be seen whether the accused acted in a cruel or unusual manner while inflicting the injury. In judging that aspect the following lines of the observations of Supreme Court in Sukhbir Singh (supra) provided a criteria:

After the injuries were inflicted and the injured fallen down, the appellant is not shown to have inflicted any other injury upon his person when he was in a helpless position.

6.3. Similar circumstance emanated from the evidence on record of the present case showing the assault. It is true that the accused inflicted injuries on the deceased but that was out of heat and there is nothing to show that he continued to give blows even after the deceased fell down. The evidence show that like a hit-and-run case the accused gave 2-3 blows and immediately thereafter ran away.

6.4. As per the evidence discussed above, the course of events had started with a scuffle when the appellant accused was unarmed and indisputably did not carry any weapon. Within short time after separating from the deceased he came back and assaulted him with Nilgiri stick. His act of assault was part of course of the same event which was triggered at Budhiabhai tea stall. The time gap between the scuffle at the tea stall and the act of assault was in its span not that much where it could be inferred that during that gap the accused premeditated and accordingly acted to commit the assault. It was therefore reasonable to conclude that the assault committed was an extension of event of scuffle took place at Budhiabhai's stall and the sudden heat generated at that time was the cause resulting into the attack. The blows were hit following a momentary heat and in the continued anger and passion and therefore could not be characterised as premeditated. At the same while not remaining oblivious to the seriousness of injuries inflicted by the accused it will be proper to hold that the offence committed by the appellant accused would fall u/s 304 part-I of IPC.

6.5. By virtue of Exception No.4 to section 300 attracted in light of the facts of the case and evidence on record, the offence committed by the appellant was culpable homicide not amounting to murder. Learned A.P.P.'s contention that it was the accused who went to the deceased and started quarreling, therefore, since the accused was the person instrumental in starting the quarrel he could not be given benefit of Exception 4, could not be accepted inasmuch as it overlooked the Explanation to Exception 4 of section 300 which state that it is immaterial in the cases where the circumstances narrated in Exception 4 are present, as to which party offers the provocation or commits the first assault. There were no circumstances from which it could be inferred that the appellant had taken undue advantage or had acted in unusual manner or in a cruel manner

in legal sense of the terms in assaulting the deceased.

6.6. Accordingly, the appellant is held guilty of offence of culpable homicide not amounting to murder punishable u/s 304 part-1 of Indian Penal Code. The impugned judgment and order recording his conviction for the offence u/s 302 is thus required to be set aside.

7. As a result, the conviction and sentence of the appellant recorded by the trial court u/s 302 of the Indian Penal Code is set aside and the appellant is convicted for the offence punishable u/s 304 part-1 of Indian Penal Code and is hereby sentenced to undergo rigorous imprisonment for eight years and to pay fine of Rs.5000/-and in default of payment of fine to undergo simple imprisonment for further three months. The conviction of the appellant u/s 323 recorded by the trial court and the sentence imposed therefor is maintained. The appellant shall undergo both the sentences concurrently. The appeal is accordingly allowed in part.