
(2013) 07 GUJ CK 0002
In the Gujarat High Court
Case No : Criminal Appeal No. 729 of 2007

Manilal Mangalbhai Vasava	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 02-07-2013

Acts Referred:

Citation : (2014) 1 GLR 799

Hon'ble Judges : Kaushal Jayendra Thaker, J;K.S. Jhaveri, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Kaushal Jayendra Thaker, J.—The present appellant-original accused has preferred this appeal under Sec. 374(2) of the Code of Criminal Procedure, against the judgment and order of conviction and sentence dated 9-4-2007 passed by the learned Presiding Officer, Fast Track Court No. 5, Vadodara in Sessions Case No. 147 of 2005, whereby, the learned trial Judge has convicted the present appellant-original accused under Sec. 302 of I.P.C. and sentenced to undergo R.I. for life and to pay a fine of Rs. 2,000/-, in default, to undergo further S.I. for one month, which is impugned in this appeal. The brief facts of the prosecution case is that on 28-2-2005, at village Kundhela, Tekra Faliyu, Taluka Dabhoi, complainant-Vajirbhai Mangalbhai Vasava after taking his supper went to sleep in the "adari" of his house at about 10-00 p.m. in the night. The appellant was also sleeping in the "adari" of his house, whereas, deceased Bhogilal Vajirbhai Vasava was also sleeping in the "adari" of his house. Since, there was a quarrel between the appellant and his wife in the morning and the deceased, who was his real nephew, had interfered and saved her, and therefore, keeping grudge in mind, at about 24-00 hours in the mid-night, the appellant had inflicted axe blows on the head and mouth of the deceased and committed murder of deceased Bhogilal Vajirbhai Vasava.

1.1. The accused came to be arraigned for committing the murder and after the investigation was complete, the charge-sheet was laid against the present

appellant-accused. Thereafter, as the case was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions, which was given number as Sessions Case No. 147 of 2005.

1.2. Thereafter, the Sessions Court framed the charge below Exh. 7 against the accused for commission of the offence under Sec. 302 of I.P.C. The accused has pleaded not guilty and claimed to be tried.

1.3. To prove the case against the accused, the prosecution has examined the following witnesses :

1. Ranjitsinh Maganbhai A.S.I., Exh. 10
2. Vajirbhai Mangalbhai Vasava Exh. 12
3. Samirsinh Pratapsinh Exh. 15
4. Chandubhai Rajibhai Patel Exh. 18
5. Dr. Mukeshkumar Kanubhai Brahmbhatt Exh. 21
6. Jayantibhai Fogatbhai Exh. 25
7. Bharatsinh Chhatrasinh Exh. 26
8. Pravinsinh Chhatrasinh Chauhan Exh. 31
9. Vikramsinh Kanubha Vaghela Exh. 32
10. Dr. Jayantbhai Somabhai Karoliya Exh. 34
11. Naginbhai Vajibhai Vasava Exh. 36
12. Rameshbhai Vasava Exh. 37
13. Natubhai Bhimabhai Vasava Exh. 39
14. Hasmukhbhai Gordhanbhai Parmar Exh. 40
15. Dhurajben Vajirbhai Vasava Exh. 41
16. Ansuyaben Bhogilal Vasava Exh. 42
17. Minaben Naginbhai Vasava Exh. 43
18. Kailashben Rameshbhai Exh. 44
19. Vijaybhai Ranchhodbhai Exh. 45
20. Arvindbhai Shanabhai Vasava Exh. 48
21. Narendra Hiralal Joshi Exh. 49
22. Khumansinh Becharsinh Kumpavat Exh. 50
23. Narendrasinh Himmatsinh Gohil Exh. 58

24. Sureshkumar Joitaram Patel Exh. 60

1.4. The prosecution also relied upon the following documentary evidences so as to bring home the charges against the accused:

1. Copy of hospital register Exh. 11

2. Yadi Exh. 16

3. Medical certificate Exh. 22

4. Copy of nondh of E.P.R. register Exh. 23

5. Inquest panchnama Exh. 24

6. Yadi given to Medical Officer Exh. 33

7. Post-mortem Report Exh. 35

8. Yadi for map Exh. 50

9. Copy of vardhi Exh. 51

10. Map Exh. 51

11. Yadi to Executive Magistrate Exh. 52

12. Report for investigation Exh. 53

13. Yadi for Post-mortem Exh. 54

14. Receipt of dead-body Exh. 55

15. Yadi for inquest papers Exh. 56

16. Yadi to in-charge officer Exh. 57

17. Panchnama of scene of offence Exh. 61

18. Certificate given by Medical Officer Exh. 63

19. Yadi to F.S.L. Exh. 64

20. Report to add Sec. 302 of I.P.C. Exh. 65

21. Receipt of muddamal Exh. 66

22. F.S.L. Report Exh. 67

23. F.S.L. Report Exh. 68

24. F.S.L. Report Exh. 69

25. Letter to P.I. Dabhoi by F.S.L. Officer Exh. 70

26. Dispatch note of muddamal Exh. 71

27. Wireless message to Dy. S.P. about offence under Sec. 302 of IPC Exh. 72

28. Wireless message about arrest of accused Exh. 73
29. Panchnama of person of accused Exh. 74
30. Letter to relatives of accused about arrest Exh. 75
31. Yadi to Medical Officer, Vadodara Exh. 76
32. Yadi to F.S.L. Exh. 77
33. Special report Exh. 78
34. Copy of station diary Exh. 79
35. Yadi to add Sec. 302 of I.P.C. in F.I.R. Exh. 80
36. Report regarding investigation given to P.S.I., Dabhoi Exh. 81
37. Vardhi for hospital Exh. 82
38. Panchnama of blood sample of deceased Exh. 83

1.5. Thereafter, after examining the witnesses, further statement of the accused under Sec. 313 of Cr.P.C. was recorded in which the accused has denied the case of the prosecution.

2. After considering the oral as well as documentary evidence and after hearing the parties, learned trial Judge vide impugned judgment and order dated 9-4-2007 has convicted the present appellant-original accused as stated above.

2.1. Being aggrieved by and dissatisfied with the aforesaid judgment and order passed by the Sessions Court, the present appellant has preferred the present appeal.

2.2. We have heard learned Advocate Mr. Pratik B. Barot for the appellant and learned A.P.P. Ms. C.M. Shah for the respondent-State.

3. The learned Advocate Mr. Barot for the present appellant has contended that the trial Court has committed an error in passing the impugned judgment and order, inasmuch as it failed to appreciate the material on record in its proper perspective, and hence, the present appellant be given the benefit of doubt and be acquitted.

4. On the other hand, learned A.P.P. Ms. Shah has strongly opposed the contentions raised by the learned Advocate for the present appellant and has submitted that the trial Court has passed the impugned judgment and order after taking into consideration the facts and circumstances of the case as well as the material, in the form of oral and documentary evidence, produced before it, and hence, no interference is called for and the appeal deserves to be dismissed. Learned A.P.P. has further contended that this is a case of brutal murder, and therefore, no leniency should be shown to the accused since the injuries are on the vital part of the body, hence, no interference is called for and the appeal

deserves to be dismissed.

5. Having gone through the entire evidence oral as well as documentary, and considered the ocular version and the medical evidence, it goes without saying that the injuries on the deceased were caused by axe which was inflicted by the appellant-original accused and axe was also found from the possession of the present appellant. The clinching evidence is of P.W. 1 Ranjitsinh Maganbhai Exh. 10, medical evidence and the chain of evidence shows that at the mid-night, i.e. about 12-00 O'clock, when the deceased was sleeping, the appellant came there with axe and had inflicted the axe blows on the deceased. Though, the learned Advocate for the appellant has tried to convince this Court that it was with the hind part of axe the blow was given. Looking to the relation of the deceased with appellant, he could not have motive or intention to kill. The intention of the appellant was at least to cause such bodily injury which might have led to such injuries which could be said to constitute culpable homicide. In this case, we are unable to persuade ourselves to the submission made by learned Advocate Mr. Barot that this is a case of culpable homicide not amounting to murder. The injuries, F.S.L. report and the ocular version proves that the impact of the injuries were such that CLW 3.0 x 0.5 cm. over left parietal region, there was haemorrhage, 2 x 0.5 cm. CLW over (L) occipital region, 0.5 x 0.5 cm. left temporal region and parietal fracture of the bone, which could be possible by axe. P.W. 5-Dr. Mukeshkumar Kanubhai Brahmbhatt Exh. 21 in his ocular version also withstood. He has examined the patient, and thereafter, he was sent for further treatment to Civil Hospital, Ahmedabad. An endeavour was made that there was no abnormality seen on the chest and sonography was also done, however, the death was due to shock and haemorrhage and due to brain injury. The brain haemorrhage was such whereby the blood had clotted and that has to be operated. All these injuries cannot be said to be such which would be done without any intention of causing such bodily injury which may cause death. Hence, the contention that there was no intention to commit murder of the deceased has to be rejected. It cannot be said that there was sudden fight as suggested by the learned Advocate for the appellant that the yadi shows that there was a quarrel and no injuries were found on the accused. There was no mutual fight, and therefore, on the facts also, it cannot be said that there was sudden quarrel or fight. Therefore, we are unable to persuade ourselves to take a different view than the one taken by the learned trial Judge and alter the conviction rendered by the learned trial Judge under Sec. 302 of I.P.C. to under Sec. 304, Part-I or II. We are fortified in our view by the latest decision of the Apex Court in the case of State of Maharashtra v. Manjurrya, reported in 2003 (12) SCC 787, in similar facts, head injuries resulted in internal fracture and profusely bleeding and deceased died as a result of the injuries and held that facts show that the incident had not taken place "without premeditation in a sudden fight in the heat of passion upon a sudden quarrel", and therefore, Exception 4 to Sec. 300 not attracted. Here in this case also, the deceased died out of that injuries. In this case also, even if blunt side of the axe was used, that

itself would not indicate any lack of intention to cause murder. Having regard to the nature of injuries inflicted by the accused nor can he persuade us to hold that he had no knowledge that such injuries would lead to the death of the injured. All the circumstances and the ocular version as well as the cause of death due to shock and haemorrhage due to head injury will not persuade us to take any other view then that one taken by the learned trial Judge. The evidence of P.W. 1, 2, 3, 5, 7, 9 to 19 and 21 to 24 inspire confidence regarding the presence of the accused regarding the use of weapon, regarding intention, and therefore, this appeal fails and requires to be dismissed.

6. We are in complete agreement with the findings, ultimate conclusion and resultant order of conviction and sentence passed by the trial Court and we are of the view that no other conclusion except the one reached by the trial Court is possible in the instant case as the evidence on record stands. Therefore, there is no valid reason or justifiable ground to interfere with the impugned judgment and order of conviction and sentence. In the result, this appeal is dismissed. The impugned judgment and order of conviction and sentence dated 9-4-2007 passed by the learned Presiding Officer, Fast Track Court No. 5, Vadodara in Sessions Case No. 147 of 2005 is confirmed. R. & P. to be sent back to the trial Court, forthwith. However, life would not be till last breath and his case may be considered by the appropriate authority.