
(2006) 07 GUJ CK 0078
In the Gujarat High Court
Case No : Criminal Appeal No. 1079 of 1998

Manoj Keshavlal Dave

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 11-07-2006

Acts Referred:

Bombay Police Act, 1951 — Section 135, 37, 37(1)
Penal Code, 1860 (IPC) — Section 300, 302, 304

Citation : (2006) 07 GUJ CK 0078

Hon'ble Judges : Bankim N. Mehta, J; A.L. Dave, J

Bench : Division Bench

Advocate : B.S. Patel and Ranjan B. Patel, for the Appellant; H.M. Prachchhak, APP, for the Respondent

Judgement

A.L. Dave, J.—This appeal arises out of a judgment and order rendered by learned Additional Sessions Judge, Vadodara, in Sessions Case No. 15 of 1998, on October 30, 1998, convicting the appellant for offences punishable u/s 302 of the Indian Penal Code and Section 135 of the Bombay Police Act.

2. The appellant was tried and convicted for murder of his brother-Jayesh, which he allegedly committed on 16th September, 1997, at about 22.30 hours, at their residence in Khatripole, Vadodara. He was sentenced to undergo imprisonment for life and to pay a fine of Rs. 500/-, in default, to undergo simple imprisonment for 15 days. The appellant allegedly used a screw driver for commission of the offence and was, therefore, convicted for the offence punishable u/s 135 of the Bombay Police Act and sentenced to undergo simple imprisonment for one month and to pay a fine of Rs. 100/-, in default, to undergo simple imprisonment for 7 days. Aggrieved by the said judgment and order, the appellant has preferred this appeal.

3. The appellant with his brothers was staying at their house in Khatripole, at Vadodara. Different brothers were occupying different parts of the house. The room occupied by the appellant and that of the deceased were adjoining to each

other with a common partition wall. The deceased had a hectic day behind him on the day of the incident and, after returning from his work, he wanted to go to sleep at about 10.30 P.M. He, therefore, switched off the light of the room. At that time, the appellant insisted for keeping the light on, which gave rise to a quarrel between the two brothers. At that time, wife of the deceased was present in the room. Hearing the quarrel, another brother-Kanaiyalal Keshavlal, who was staying on the upper storey of the house came down with his son- Umang followed by Bhartiben, wife of Kanaiyalal Keshavlal. Kanaiyalal intervened and separated the two quarrelling brothers, i.e. the appellant and the deceased. The appellant went out of the house. The deceased also came out of the house and was standing on the Otta. The appellant had gone to the rickshaw parked outside the house. From there, he took out a screw driver and rushed towards the deceased and inflicted a blow on the left side chest of the deceased. He also caused another injury on right elbow of the deceased. As a result of the assault, the deceased fell down and the appellant escaped from the place. Wife of the deceased-Falguni applied medicine on the wound and then the deceased was taken to SSG Hospital for further treatment, where he was declared dead.

3.1 Brother-Kanaiyalal Keshavlal lodged an F. I. R. with police, on the basis of which investigation was started. And after collection of evidence, charge sheet came to be filed in the Court of learned Chief Judicial Magistrate, Vadodara. The case came to be committed to the Court of Sessions as the offences were triable exclusively by a Court of Sessions. Sessions Case No. 15 of 1998 came to be registered. Charge against the appellant was framed at Exhibit 5. The appellant pleaded not guilty to the charge and claimed to be tried.

3.2 The Trial Court, after considering the evidence led by the prosecution, came to a conclusion that the prosecution was successful in establishing both the charges and recorded conviction, as stated above.

4. Learned Advocate, Mr. B.S. Patel, appearing for the appellant has taken us through the record and proceedings. He submitted that it is difficult for the appellant to come out of the evidence showing his involvement in the incident and, therefore, he does not press the appeal for a clean acquittal. Mr. Patel, however, submitted that, if the evidence is examined, it is clear that the appellant and the victim were blood brothers. There is no history of any previous quarrel or animosity. Mr. Patel submitted further that the incident seems to have erupted suddenly on a petty issue and, if the weapon used by the appellant is seen, it is only a mechanical implement, namely, a screw driver, usually kept handy in vehicles. Even as per evidence, it was brought out by the appellant from his auto-rickshaw. Mr. Patel, therefore, submitted that from any angle, it cannot be said that there was either intention or knowledge on the part of the appellant to commit murder of the deceased. According to Mr. Patel, the case would fall under exception 4 to Section 300 of the Indian Penal Code. Mr. Patel submitted that the appellant has been in jail since 1997 and, therefore, his conviction may be altered from one u/s 302 to Section 304, Part-II of I.P.C. and

appropriate sentence may be awarded.

4.1 Mr. Patel submitted further that the Trial Court has also convicted the appellant for the offence punishable u/s 135 of the Bombay Police Act. The weapon allegedly used is a screw driver, the length of which is only 11 inches, which is used as a mechanical implement and, therefore, it cannot be considered as a weapon which would be covered under the notification of the Police Commissioner u/s 37 of the Bombay Police Act. He, therefore, submitted that the said conviction may be set aside.

5. The appeal is opposed to by learned Additional Public Prosecutor, Mr. Prachchhak. According to him, the appellant has taken life of his own brother over a petty issue. Mr. Prachchhak submitted that the case would fall only u/s 302 of I.P.C. as the appellant has inflicted the blow with full force on vital part of the body and that he did not stop at one blow, but also inflicted the second blow, which of course fell only on elbow of the deceased and, therefore, the conviction is rightly recorded and the Court may not entertain this appeal. So far as conviction u/s 135 of the Bombay Police Act is concerned, learned Additional Public Prosecutor submitted that appropriate orders may be passed.

6. We have considered rival side contentions and have examined the record from that angle.

7. We find that the prosecution has examined Kanaiyalal Keshavlal Dave, at Exhibit 8, Falguni Jayeshkumar Dave, at Exhibit 10, Bhartiben Kanaiyalal Dave, at Exhibit 11 and Umang Kanaiyalal Dave, at Exhibit 13, as eye-witnesses to the incident. The picture that emerges from their depositions is that the deceased had come back from his job, had his meal and wanted to go to sleep. He, therefore, switched off the light of his room, which was adjacent to the room of the appellant having only a common partition wall. The appellant wanted the light to remain on. He, therefore, switched it on. That resulted into a quarrel and a scuffle. At that time, Falguniben was present and she tried to separate the two quarrelling brothers. In the meantime, Kanaiyalal came to the spot from the upper storey of the house along with his son-U mang. Kanaiyalal separated the two quarrelling brothers, namely, the appellant and the deceased, and the appellant, therefore, went out of the house. The deceased also came out of the house and was standing on the Otta. The appellant who had gone to his rickshaw which was parked outside the house, took out a screw driver and rushed to the deceased and inflicted a blow which fell on left side chest of the deceased. The second injury was caused on right elbow. The deceased fell down and the appellant ran away. After applying medicine on the wound, the deceased was taken to hospital, where he was declared dead.

7.1 We find that all these witnesses have been cross-examined at length, but on peripheral aspects like relationship, topography, etc. However, on incident, nothing turns out which can be said to be favourable to the appellant.

7.2 Dr. Mayank Modi is examined at Exhibit 18 and the Postmortem Notes are at

Exhibit 19.

7.2.1 From the medical evidence, it appears that there was a stab wound of the size of 1 x 0.7 cm. over left side front of chest on 6th intercostal space. There was another injury of same nature on the right forearm. There was also an internal injury corresponding to external injury No. 1 going deep into the thoracic cavity damaging the right ventricle. The injuries are, opined by the doctor, to be ante-mortem and sufficient in ordinary course of nature to cause death.

8. The picture that emerges, therefore, is that the incident occurred all of a sudden between the brothers. There was no previous quarrel and there was no premeditation. It suddenly erupted from a petty issue of keeping the light on or putting it off. The appellant and the deceased were quarrelling with each other when they were separated. But the appellant appears to have been gripped by heat of passion, he rushes to his rickshaw, takes out a screw driver and inflicts the injuries. Barring the vital injury, the other injury is simple in nature. In our opinion, the appellant cannot be said to have acted in a cruel or unusual manner. When he was gripped by heat passion, he inflicted two blows, only one of which, unfortunately, proved to be fatal. We are, therefore, of the opinion that the conviction ought to have recorded as one punishable u/s 304 Part II of I. P .C. rather than Section 302 of I.P.C. , as there appears lack of intention to cause death on the part of the appellant. In the peculiar facts of the case, we find that the conviction deserves to be accordingly altered.

9. We notice that the conviction for offence punishable u/s 135 of the Bombay Police Act is recorded on the basis of a notification issued by Police Commissioner, Vadodara City, u/s 37(1) of the Bombay Police Act. We have perused the notification and, in our opinion, the screw driver in question would not fall within the categories of weapons indicated in the notification and, therefore, conviction u/s 135 of the Bombay Police Act cannot be sustained and the same deserves to be set aside.

10. Resultantly, the appeal stands partly allowed. Conviction of the appellant for offence punishable u/s 135 of the Bombay Police Act is set aside.

10.1 Conviction of the appellant for the offence punishable u/s 302 of I.P.C. is altered to one u/s 304 Part II of I.P.C. The appellant is sentenced to suffer rigorous imprisonment for the period which he has already undergone and to pay a fine of Rs. 500/-, in default, to undergo further imprisonment for a period of seven days. The judgment and order of the Trial Court, impugned herein, is modified accordingly.