
(1988) 08 GUJ CK 0021
In the Gujarat High Court

Memon Yakubbhai Janmohmed and Another APPELLANT
Vs
State of Gujarat RESPONDENT

Date of Decision : 10-08-1988

Acts Referred:

Penal Code, 1860 (IPC) — Section 300, 302, 304, 323

Citation : (1989) CriLJ 1843 : (1989) 2 GLR 862

Hon'ble Judges : N.B. Patel, J;J.P. Desai, J

Bench : Division Bench

Judgement

1 to 6. xxxxx.

The evidence of Rahimbhai and Yusufbhai is thus found to be acceptable as supported by the medical evidence and, therefore, we are inclined to agree with the learned trial Judge that the accused No. 1 gave two knife blows to the deceased and caused his death while accused No. 2 gave iron-pipe blow to Yusufbhai and caused him simple hurt. So far as accused No. 2 is concerned, it is obvious that he committed an offence punishable u/s 323 of the I.P. Code by giving a blow with an iron pipe to Yusufbhai. The question is as to what offence can be said to have been committed by the accused No. 1, Yakubbhai. The learned trial Judge has reached the conclusion that the incident was a sudden one in which the deceased was done to death by Yakubbhai and hence his act would be covered by Exception 4 to Section 300 of the I.P. Code. Exception 4 to Section 300 of the I.P. Code reads as follows:

Exception 4 : Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

"Explanation : It is immaterial in such cases which party offers the provocation or commits the first assault.

The Exception says that the offence will not be that of murder if the offence is

committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel. That much part of Exception is satisfied in the present case. But it further says that the offender must not have taken undue advantage or acted in a cruel or unusual manner. In the present case one blow was [given on the chest and after receiving the blow the deceased leaned down and at that time another blow was given on the back of the deceased. This shows that the accused who gave knife blows took undue advantage. The case of this accused cannot be covered by Exception 4 to Section 300 of the I.P. Code as held by the learned Trial Judge.

7. Looking to the nature of the injuries which were sufficient in the ordinary course of nature to cause death and further looking to the fact that the injuries were caused by a knife by giving blows on the chest and the back portion the offence will fall u/s 300 punishable u/s 302 of the I.P. Code unless it is covered by any of the Exceptions. The case does not fall under Exception 4 to Section 300 of the I.P. Code as discussed by us a little earlier. The question, however, remains as to whether the case can fall under any other Exception to Section 300 of the I.P. Code. Exception 2 to Section 300 of the I.P. Code reads as follows:

Exception 2 : Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

In the present case accused No. 2, Salemohmed was injured as established by the evidence of the Medical Officer. He had about five injuries on his person. The injuries were of course not serious but they prima facie show that he was injured in this incident. The prosecution witnesses did not explain how Salemohmed was injured. But it is possible that they might not have seen the injuries on the person of Salemohmed which were very minor ones. The evidence of the two witnesses cannot be discarded simply because they did not explain as to how he was injured. But one thing is certain that the defence version that Salemohmed was injured in this incident is established by Dr. Shakuntalaben Joshi who examined him on the same day and found as many as five injuries on his person which are of course possible by 3-4 blows and which were simple ones. The fact that Salemohmed was injured in this incident shows that Salemohmed might have been attacked first and thereafter Yusufbhai as well as the deceased might have been attacked. In that case it can be said that the accused No. 1 had a right of defence of the body of accused No. 2, Salemohmed but had no right to inflict two knife blows on the deceased. This is, therefore, clearly a case of accused No. 1 having exceeded right of defence of the body of the accused No. 2, Salemohmed. The offence, therefore, would fall within Exception 2 to Section 300 of the I.P. Code though not within Exception 4 to Section 300 of the I.P. Code as held by the learned trial Judge. It appears, with due respect to the learned trial Judge that he lost sight of the latter portion of Exception 4 in

reaching the conclusion that the act of the accused is covered by the said Exception. When two knife blows were given one after another causing injuries to cause death, it can be said that the accused No. 1 intended to cause death of the deceased or at any rate intended to cause such injuries which were by objective test found to be sufficient in the ordinary course of nature to cause death. Therefore, the offence will be punishable u/s 304 Part I of the I.P. Code and not u/s 304 Part II of the I.P. Code as held by the learned trial Judge. The learned trial Judge has not given convincing reasons as to how the offence will fall under Part II of Section 304 of the I.P. Code when it is clear that the accused No. I intended to cause death of the deceased or any rule such injuries to him which were sufficient in the ordinary course of nature to cause death. The nature of the weapon used by the accused No. I also indicates his intention and, therefore, also it cannot be said to be a case of mere knowledge.