
(2013) 10 GUJ CK 0194
In the Gujarat High Court

Case No : Criminal Appeal No. 797 of 2007 and Cri. Appeal No. 2670 of 2008

Meru Jeta Adadara and Others

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 01-10-2013

Acts Referred:

Citation : (2014) 1 GLR 556

Hon'ble Judges : K.S. Jhaveri, J;K.J. Thakur, J

Bench : Division Bench

Judgement

K.J. Thakur, J.—Criminal Appeal No. 797 of 2007 under Sec. 374(2) of the Code of Criminal Procedure, has been preferred by the appellants-original accused Nos. 1, 3, 4 and 5 and Criminal Appeal No. 2670 of 2008 under Sec. 374(2) of the Code of Criminal Procedure, has been preferred by the appellant-original accused No. 2, against the same judgment and order of conviction and sentence dated 13-2-2007 passed by the learned Addl. Sessions Judge & Fast Track Judge, Junagadh in Sessions Case No. 14 of 2003, whereby, the learned trial Judge has convicted the present Appellants-original accused Nos. 1 to 5 under Secs. 302, 120B and 149 of I.P.C. and sentenced them to undergo R.I. for life and to pay a fine of Rs. 5,000/-, in default, to undergo further S.I. for six months. The appellants-original accused Nos. 1 to 5 have been convicted under Secs. 341 and 149 of I.P.C. and sentenced them to undergo S.I. for one month, which is impugned in both these appeals. Since, both these appeals arise out of the same judgment and order of conviction and sentence, they are heard and disposed of by this common judgment. The brief facts of the prosecution case is that the incident in question took place at about 9-30 a.m. on 6-9-2002 on the outskirts of village Miti. It is the case of the prosecution that the complainant, Mer Rajabhai Parbatbhai had gone to village Bagasara for work in company of Bhanu Abhu and Sarman Karsan on motorcycle of the complainant at about 7-00 a.m. It is the case of the prosecution that after completing the work, when they were returning in the sim of Fulrama village, on the way to village Miti, all the accused persons came out from the Babul bush. It is further the case of the prosecution that

original accused No. 1-Meru Jeta and accused Bhima Manda (who came to be killed in encounter) had stopped the motorcycle of complainant on assault being carried out by the accused. It is the case of the prosecution that all the three persons got down from the motorcycle and started running. It is the case of the prosecution that accused caught Bhanu Abhu and assaulted with sharp-cutting weapons like sword, axe, pipes, wooden gedia and sticks. That accused No. 1-Meru Jeta and deceased accused Bhima Manda took Bhanu Abhu on their motorcycle to the crematorium of village Miti and they assaulted with sharp-cutting weapon. It is the prosecution that complainant Mer Raja Parbat and Sarman Karsan ran away from that place and went to the house of Shantaben Nagabhai and informed about the incident. It is the case of the prosecution that Shantaben Nagabhai went to the crematorium of village Miti and found Bhanu Abhu lying in injured condition and accused were standing with weapons. That when Shantaben Nagabhai went to take Bhanu Abhu, the accused persons threatened her to kill and so she ran away from that place. That on the way, Shantaben met police Jamadar Silubhai and Mansingbhai and informed about the incident. That police witnesses went to the crematorium and found Bhanu Abhu in seriously injured condition and on enquiry Bhanu Abhu informed that accused No. 1-Meru Jeta, accused No. 3-Vajashi Mulu and accused No. 5-Keshubhai Dudabhai had beaten him, and thereafter, could not speak anything further and became unconscious. The Police constable took Bhanu Abhu in rickshaw of Kalabhai Nagabhai and when they were removing Bhanu Abhu, Shantaben met them on the way and after taking her in rickshaw went to the house of Shantaben. That Bhanu Abhu died on the way, and thereafter, he was removed to Government Hospital, Mangrol by putting him in Gypsy vehicle. Therefore, the complainant Raja Parbat filed the complaint before the Shil Police Station.

1.1. The accused came to be arraigned for committing the murder. After the investigation, was complete, the charge-sheet was laid against the 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. 14 of 2003.

1.2. Thereafter, the Sessions Court framed the charge below Exh. 35 against the accused for commission of the offence under Secs. 302, 341, 148, 149 and 120B of I.P.C. and under Sec. 135 of the Bombay Police Act. The accused have 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. P.W. 1 Bhimabhai Tapubhai Exh. 43
2. P.W. 2 Dilipbhai Bhikhabhai Exh. 45
3. P.W. 3 Jivabhai Bhikhabhai Jadeja Exh. 46
4. P.W. 4 Garchar Khimabhai Karmanbhai Exh. 47

5. P.W. 5 Arjanbhai Meramanbhai Exh. 48
6. P.W. 6 Salimmiya Latifmiya Saiyed Exh. 49
7. P.W. 7 Balubhai Ranabhai Exh. 50
8. P.W. 8 Mansukhbhai Naranbhai Exh. 51
9. P.W. 9 Parbatbhai Abhabhai Mevada Exh. 52
10. P.W. 10 Dr. Yogitaben Ravibhai Gholiya Exh. 53
11. P.W. 11 Shantaben Nagabhai Exh. 61
12. P.W. 12 Nagabhai Parbatbhai Exh. 62
13. P.W. 13 Rambhai Parbatbhai Vala Exh. 68
14. P.W. 14 Manjuben Rajabhai Parbat Exh. 69
15. P.W. 15 Hiriben Abhubhai Exh. 70
16. P.W. 16 Karabhai Nagabhai Exh. 72
17. P.W. 17 Mansingbhai Dadubhai Exh. 74
18. P.W. 18 Karsanbhai Parbatbhai Exh. 77
19. P.W. 19 Jamnadas Kalyanjibhai Exh. 81
20. P.W. 20 Danabhai Deshabhai Exh. 88
21. P.W. 21 Osmanbhai Bilalbhai Exh. 94
22. P.W. 22 Mansukhbhai Gagajibhai Barot Exh. 102
23. P.W. 23 Subhashbhai Fogabhai Vadher Exh. 107
24. P.W. 24 Jitendra Balvantbhai Raval Exh. 133
25. P.W. 25 Yashvantsinh Ramdev Zala Exh. 137
26. P.W. 26 Mahavirsinh Sajubha Rana Exh. 149

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

1. Inquest panchnama Exhs. 44, 55
2. Yadi Exh. 54
3. Death form Exh. 56
4. Post-mortem Note Exh. 57
5. Notification Exh. 76
6. Copy of complaint Exh. 82

7. Copy of charge-sheet Exh. 83
8. Abate report Exh. 84
9. Complaint of Bantava Police Station being C.R. No. 1-25 of 2004 Exh. 85
10. Copy of station diary Exh. 86
11. Copy of charge-sheet Exh. 87
12. Complaint Exh. 89
13. Post-mortem Note of Bhoja Kala Exh. 90
14. Letter Exh. 91
15. Yadi Exh. 92
16. Yadi for warrant Exh. 90
17. Copy of complaint book Exh. 95
18. Copy of charge-sheet Exh. 96
19. Charge-sheet Exh. 97
20. Counter of charge-sheet Exh. 98
21. Copy of complaint of Haji Jusab Exh. 99
22. Complaint of Laxman Parbat Exh. 100
23. Complaint Exh. 101
24. Copy of station diary and charge-sheet Exh. 103
25. Copy of station diary Exh. 104
26. Copy of A-summary Exh. 105
27. Abated summary Exh. 106
28. Complaint of Raja Parbat Exh. 108
29. Copy of Complaint Exh. 109
30. Copy of complaint of Shil Police Station Exh. 110
31. Letter to P.S.O. Mangrol Exh. III
32. Yadi Exh. 112
33. Notification against accused Bhima Manda Exh. 113
34. Notification Exh. 114
35. Panch rojkam Exh. 115
36. Rojkam Exh. 116

37. Copy of entry No. 7 of Shil Police Station Exh. 126
38. Copy of complaint book Exh. 127
39. V.H.F. message Exh. 128
40. Yadi Exh. 129
41. Panchnama of clothes Exh. 130
42. Copy of charge-sheet Exh. 131
43. Complaint Exh. 134
44. Copy of station diary Exh. 135
45. Panchnama Exh. 138
46. Report to add Sec. Exh. 139
47. Order of D.S.P. Exh. 140
48. Writing Exh. 141
49. Order Exh. 142
50. Despatch note Exh. 143
51. Receipt of F.S.L. Exh. 144
52. Yadi Exh. 145
53. Yadi Exh. 146
54. Yadi for arrest Exh. 147
55. Writing for preparing map of scene of offence place Exh. 148
56. Panchnama Exh. 150
57. Letter Exh. 151
58. Warrant Exhs. 152 to 157
59. Warrant of Bhima Manda Exh. 158
60. Report Exh. 159
61. Panchnama of weapons Exh. 160
62. Letter to Talati Exh. 161
63. Order for investigation by D.S.P. Exh. 162
64. Yadi to F.S.L. about muddamal Exh. 163
65. Despatch note Exh. 164
66. Receipt of F.S.L. Exh. 165

- 67. Letter of F.S.L. Exh. 166
- 68. F.S.L. Report Exh. 167
- 69. Serological report Exh. 168
- 70. Notification Exh. 169
- 71. Warrant under Sec. 70 Exh. 170
- 72. Report to publish notification Exh. 171
- 73. Notification under Sec. 82 Exh. 172
- 74. Notification Exh. 173
- 75. Writing about proceedings under Secs. 82 and 83 of Cr.P.C. Exh. 174
- 76. Order under Sec. 165 Exh. 175
- 77. Notification Exh. 176
- 78. Report of daily newspaper Exh. 177
- 79. Letter of Shil Police Station Exh. 178

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

3. After considering the oral as well as documentary evidence and after hearing the parties, learned trial Judge vide impugned judgment and order dated 13-2-2007 held the present appellants-original accused guilty of the charge levelled against them under Secs. 302, 120B, 341 and 149 of I.P.C. and convicted and sentenced the appellants-accused, as stated above.

4. We have heard learned Advocate Mr. P.M. Lakhani for appellant Nos. 2 and 4 and Mr. Pratik Barot learned Advocate for appellants No. 1 and 3 in Criminal Appeal No. 797 of 2007 and Ms. C.M. Shah learned A.P.P. for the respondent-State and Mr. A.D. Shah learned Advocate for appellant and Ms. C.M. Shah learned A.P.P. for the respondent-State in Criminal Appeal No. 2670 of 2008.

5. The learned Advocates for the present appellants have 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 appellants deserve to be given the benefit of doubt and be acquitted.

6. On the other hand, learned A.P.P. has strongly opposed the contentions raised by the learned Advocates for the present appellants 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 appeals deserve to be dismissed.

7. Having considered minutely the evidence on record, oral as well as documentary evidence, which we have appreciated, re-appreciated and reconsidered in light of the latest decision of the Apex Court. The prosecution was handicapped as during the trial, the original complainant who had given the F.I.R. was done to death and for that some of the accused were facing another trial under Sec. 302 I.P.C. One eye-witness was also done to death for which also a separate criminal case was going on. Under this macabre of position, political rivalry due to village and Taluka Panchayat election, both the sides have lost family members. Three accused passed away during and before the trial commence.

8. As far as appeal of the sole appellant i.e. Criminal Appeal No. 2670 of 2008 is concerned, we have heard Mr. A.D. Shah learned Advocate at length. He has relied on the decisions of the Apex Court in the case of B.K. Channappa Vs. State of Karnataka, and in the case of Harkirat Singh Vs. State of Punjab, . He has submitted on behalf of Mr. Lakhani as well as Mr. Barot that as far as F.I.R. and the statement of deceased are concerned, the accused could not have been convicted merely on the basis of the statement of hear-say evidence of one of the witness. Mr. A.D. Shah has then taken us through the evidence which relates to his client i.e. original accused No. 2-Veja Uka Odedara who was alleged to have armed with pipe. It is submitted by learned Advocate for the appellant-original accused No. 2 that even if the oral dying declaration is considered to have made before the police authorities, his name nowhere appears in the said dying declaration but names of only accused Nos. 1, 3 and 5 appeared. According to him, even the medical evidence does not show that there was any pipe injury. According to him, the evidence of P.W. 11, Shantaben Nagabhai Exh. 61 was also such which was a hear-say evidence. The evidence of deceased-complainant Mer Rajabhai Parbatbhai is hit by Sec. 60 of the Evidence Act and cannot be acted upon. He further relied on the decision of the Apex Court to contend that in light of the injuries which were there, it cannot be said that the common object was there to kill. According to him, the deceased was not a very closed relative of Raja Parbat who was a distant nephew, and therefore, there was no motive to do away with his life. It is submitted that though all armed with so-called deadly weapons, the injuries which were caused were not by sharp-edged weapon and though there are seven accused persons, the injuries are not so many, and therefore, the dead was due to cardio-respiratory failure due to multiple fractures, and at the most, even if it is considered to be a case under Sec. 149 of I.P.C., the cumulative effect would be falling within Sec. 304, Part-I of I.P.C. for all the accused.

9. Learned Advocate Mr. P.M. Lakhani appearing for appellants-original accused No. 2 and 4 in Criminal Appeal No. 797 of 2007, has contended that the case would fall at the most under Sec. 304, Part-I of I.P.C. even if the evidence of all the witnesses are taken cumulative effect.

10. So as to supplement this argument, learned Advocate Mr. Barot appearing for the appellants-original accused Nos. 1 and 3 has submitted that no blood was found on the axe. Original accused No. 4-appellant No. 3 is not connected with the accused side. He is nowhere related to them and his name did not find place in the so-called oral dying declaration and contended that looking to the injuries, at the most, appellant No. 1-original accused No. 1 may be given benefit of doubt or at the most he be convicted under Sec. 304, Part-II as his role is nowhere proved.

11. As against this, learned A.P.P. Ms. C.M. Shah has heavily relied on the oral dying declaration. The date of arrest, i.e. conduct of the accused that they were arrested after almost three months, after proceedings under Sec. 70 of Cr.P.C. were taken. The complainant and important eye-witness were done to death so that justice would not have been brought. She has heavily relied on the arrest panchnama as well as discovery panchnama, which shows that the motorcycle was found and the arrest panchnama also shows the involvement of all the accused. The medical evidence shows that the weapons were used by all the accused in consortium.

12. We have convinced that it was an unlawful assembly with the common intention to do away with the deceased. We are not agreed by the submission that because of the decision of the Apex Court in B.K. Channappa Vs. State of Karnataka, , the injuries were minimal, and it would fall within the purview of Sec. 304, Part-II. The injuries are as under:

1. Contusion reddish blackish coloured, size 2 cm. x 1 cm. on (Lt.) side of forehead above eyebrow.
2. Incised wound 2 cm. x 1 cm. x 1 cm. muscle deep over (rt.) elbow lateral side.
3. Multiple small abrasions on (Rt.) thumb, index, middle fingers, on dorsal aspect, variable shape and sizes.
4. Reddish blackish coloured contusion 6" x 3" over (Rt.) shoulder joint laterally.
5. Abrasions of size 2 cm. x 1 cm. superficially over (Lt.) arm anteriorly.
6. Reddish contusion of size 4 cm. x 1 cm. over (Lt.) thigh lateral size.
7. Reddish contusion of size 2 cm. x 1 cm. over (Lt.) knee jt. anteriorly.

13. The deceased died due to cumulative effect and cardio-respiratory failure and even as per the doctor was because of fear also of so many people attacking him, and therefore, we are not persuaded to take a different view then the one taken by the learned trial Judge as the deceased was of 25 years of age who died on the same day within two hours. This takes us to the role of each of the accused. We have no doubt in our mind that the injuries were caused by blunt side of axe, gupti and the stick which was used by deceased-accused Bachu Dudha and the hind part of the sword by deceased-accused Bhima Manda, and therefore, having considered the evidence of all the witnesses, the cumulative

effect that we are unable to persuade ourselves to take a different view then the one taken by the learned trial Judge as far as original Accused No. 1-Meru Jeta Odedara, original Accused No. 3-Vajashi Mulubhai Odedara, original Accused No. 4-Shamla Sarmanbhai Odedara and original Accused No. 5-Keshubhai Dudabhai Odedara. However, from the point of view, ori. Accused No. 2-Veja Uka Odedara, we would have to consider the evidence on record. No bloodstains were found from the clothes of this accused. No blood of deceased was found from the pipe and whether the death would be by pipe, stick or hind part of axe is not explained in the oral dying declaration, and therefore, we consider his case false and just he being a labourer of one of the accused in the political scenario, he seems to have been roped in the case, and therefore, Criminal Appeal No. 2670 of 2008 preferred by original accused No. 2 requires to be allowed.

14. P.W. 11-Shantaben W/o. Nagabhai Exh. 61, in her evidence has deposed that she was informed by Raja Parbat and Sarman Karshan that when they were returning from Bagasara, the accused persons assaulted upon deceased Bhanu Abhu and taken him to the crematorium of village Miti and due to fear, they came here. The witness further mentioned that when she reached the crematorium of village Miti to take back deceased Bhanu Abhu, the accused persons threatened her to kill, therefore, due to fear, she returned back home. While-returning back home, on the way, she met Shilubhai Jamadar and Mansingbhai, a policeman, and informed them about the incident. Therefore, they bring Bhanu Abhu from crematorium of Miti village in a rickshaw to her home. She has identified the accused persons in the Court. P.W. 17-Mansingbhai Dadubhai Exh. 74, in his oral evidence has deposed that he and one A.S.I. Liladharbhai Madhavajibhai were on duty of Bandobast at village Miti. He further mentioned that on 6-9-2002, at about 11-00 a.m., P.W. 11-Shantaben met him near bus-stand and informed him that one Mer Bhanu Abhu, who is residing with her, has been assaulted by Bhima Manda and other accused persons and caused serious injuries to him and he is lying in the crematorium of village Miti and when she went there to take back Bhanu Abhu, the accused persons threatened her, therefore, she told him to go and bring back Mer Bhanu Abhu. This witness further mentioned that he and one Shilubhai Jamadar thereafter went to crematorium of village Miti where they found Bhanu Abhu lying in a serious condition. This witness further mentioned that on asking, Bhanu Abhu informed him that Meru Jeta, Vajashi Mulu and Keshu Duda had beaten him, and thereafter, he became unconscious. Thereafter, they took him in rickshaw first to the house of witness Shantaben, and thereafter, to the hospital but on the way to the hospital, Bhanu Abhu died. From the evidence of these witnesses, many important aspects arise. She is an injured eye-witness. The deceased Bhanu Abhu was taken to the crematorium and all these was conveyed to Shilubhai who was the police Jamadar of that area. Even P.W. 14-Manjuben Exh. 69 and P.W. 18-Karshanbhai Parbatbhai Exh. 77 have supported this version, and therefore, we have no hesitation in holding that the view taken by the learned trial Judge as far as original accused Nos. 1, 3, 4 and 5 is plausible view, and we do not think that

we would like to interfere with the same. Even from the evidence of P.W. 11 and P.W. 12 does not emerge that Veja Uka Odedara-original accused No. 2 has any role to play. The evidence which we have discussed hereinabove would permit us to take the aforesaid view and in the totality of all the evidence before us, we hold that the decisions of the Apex Court reported in Harkirat Singh Vs. State of Punjab, and B.K. Channappa Vs. State of Karnataka, would apply to the facts of this case.

15. In the result, Criminal Appeal No. 797 of 2007 is dismissed. The impugned judgment and order of conviction and sentence dated 13-2-2007 passed by the learned Addl. Sessions Judge & Fast Track Judge, Junagadh in Sessions Case No. 14 of 2003, is confirmed. It would be futile exercise to direct the State Government to give remission to the appellants as they are accused in another case and they have been convicted.

16. Criminal Appeal No. 2670 of 2008 is allowed. The impugned judgment and order of conviction and sentence dated 13-2-2007 passed by the learned Addl. Sessions Judge & Fast Track Judge, Junagadh in Sessions Case No. 14 of 2003, is quashed and set aside. Appellant-original Accused No. 2-Vejabhai Ukabhai Odedara is acquitted by granting benefit of doubt. He is on bail. His bail and bail bonds are discharged. R. & P. to be sent back to the trial Court, forthwith.