
(2013) 11 GUJ CK 0073
In the Gujarat High Court
Case No : Criminal Appeal No. 1197 of 2007

Mukeshbhai Gemabhai Rathwa

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 19-11-2013

Acts Referred:

Citation : (2013) 11 GUJ CK 0073

Hon'ble Judges : Z.K. Saiyed, J; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Mrudul M Barot, for the Appellant; H.L. Jani, APP, for the Respondent

Final Decision : Dismissed

Judgement

Akil Abdul Hamid Kureshi, J.—Appellant-original accused has challenged judgment dated 17.8.2007 rendered by learned Additional Sessions Judge, Vadodara, in Sessions Case No. 1 of 2007. Under such judgment the accused was convicted for offence punishable under Sections 302 and 307 of the Indian Penal Code. For the offence u/s 302 he was sentenced life imprisonment. For the offence u/s 307 seven years imprisonment was awarded. Such sentences were, however, made concurrent. Briefly stated the prosecution version was that, accused-Mukeshbhai Gemabhai had borrowed Rs. 3,600/- from a money lender Vipulbhai Sambhubhai by pledging a pendant of his younger brother's wife. Such amount was borrowed for the purpose of paying the installment of his loading rickshaw which he had purchased on loan. His acquaintance Desingbhai Koyjibhai, the complainant, leaked such information to the father of the accused. This angered the accused. In the night of 28.9.2006 accused came to the house of the complainant Desingbhai at about 2:30 with an axe. Complainant, Desingbhai was sleeping in the open with his wife and children. The accused gave axe blow to the complainant Desingbhai and to his two sons and daughter. His son Ravindra died due to the head injuries caused by the accused. The other three person's i.e. complainant and his two children received serious injuries. As per charge Ex. 4 therefore the accused was charged with offences punishable

under Sections 302 and 307 of the Indian Penal Code.

2. Vipulbhai Sambhubhai P.W. No. 4 at Ex. 25 was the person from whom the accused had borrowed said sum of Rs. 3,600/-. In his deposition he stated that he was engaged in the business of money lending, for which he had a license. On 6.9.2006, the accused came to his shop and borrowed a sum of Rs. 3,600/- from him.

3. Rajubhai Gordhanbhai P.W. No. 5 at Ex. 27 was the proprietor of one Ganesh Auto Agency. He had the agency of three wheeler, from whom the accused purchased a loading rickshaw on 10.8.2006. As per this witness, the accused made down payment of Rs. 10,000/- and Rs. 3,500/- had to be paid through financing later on. He produced at Ex. 28 extract of the register he maintained for such purpose from which it appears that the accused had to pay the sum of Rs. 3,500/- by 7.9.2006.

4. The complainant, Desingbhai, P.W. No. 6 was examined at Ex. 32. He deposed that on the date of the incident he was sleeping outside his house. At 2:30 at night, he was given a blow with an axe on the right side of the head. His son Ravindra and Rajkamal, his daughter Rekha and Rashmitaben and his wife Ravitaben were sleeping near him. With the axe blow he woke up. Near his cot he had kept a torch. With the light of the torch he saw that the assailant was the accused -Mukeshbhai Gemabhai. Mukeshbhai also given a blow on the head to his son Ravindra and also on his son Rajkamal on the head. Simultaneously he gave one blow to his daughter Rekha over her eye. He knew Mukeshbhai since he was residing in the same locality since years. He identified the accused before the Court. He also identified the axe as the murder weapon. Regarding the motive he stated that the accused had to pay some amount to an injured, since he had caused an accident with his rickshaw for which he had pledged the pendant of the wife of his brother. This information he had shared with the father of the accused, because of this animosity the accused assaulted them.

4.1 He himself and his injured sons and daughter were treated at Government Hospital at Pavi-Jetpur, but his son Ravindra died en route. They were thereafter shifted to hospital at Vadodara. He had filed complaint before the police which was produced at Ex. 33.

4.2 This witness was cross-examined mainly on the question of identification of the accused on the premise that the incident took place in the middle of the night. He was also confronted with certain so called improvements made by him in his deposition as compared to his FIR. Though the defence has been harping that the availability of the torch was not mentioned by the complainant in the FIR, the FIR Ex. 33, however, suggests to the contrary.

5. Ravitaben Desingbhai P.W. No. 7, the wife of the complainant was examined at Ex. 34. She was also sleeping outside the house when the incident took place. She deposed that the incident took place at about 3:00 O'clock at night. She, her husband and children were sleeping outside. The accused gave axe blow to

Desingbhai on the head and thereafter to son Ravindra, daughter-Rekha and son Rajkamal. She woke up upon hearing the cries of her children. In the cross-examination, however, she admitted that in the police statement she had not given the details of the blows given by the accused to different members of the family.

6. Rashmikaben Desingbhai P.W. No. 8, the daughter of the complainant was examined at Ex. 35. She was also sleeping outside the house with the other family members at the time of incident. She also deposed that the accused had given axe blows to the complainant as well as to her sister and brothers.

7. Rekhaben Desingbhai P.W. No. 9, another daughter of the complainant who was examined at Ex. 36. She herself had received injury on the left eye. She, however, candidly stated that, she later on came to know the name of the person who had given the blow to her.

8. The murder weapon axe was discovered at the instance of the accused under discovery panchnama at Ex. 13. The panch witness, Mohanbhai P.W. No. 2 Ex. 11 supported the prosecution. As per the witness and the panchnama Ex. 13, the accused had led the panch witnesses and the police party to his house from where, from behind a trunk he took out an axe. It had a handle of three ft. nine inches long. It's blade was six inches long and three inches wide.

9. Harshadbhai Jashbhai P.W. No. 15 at Ex. 55 was the Investigating Officer. He gave the detailed account of steps taken by him during the course of the investigation.

10. At this stage, we may refer to the medical evidence. Dr. Nazima Shaikh P.W. No. 13 Ex. 42 was the Medical Officer at S.S.G. Hospital, Vadodara. She had treated Rajkamal Desingbhai, the complainant Desingbhai himself, as also his daughter Rekhaben Desingbhai. She had found a wound on the head of Rajkamal three centimeter long which she had stitched. She had referred him for further treatment. She produced injury certificate at Ex. 43.

10.1 In case of Rekhaben Desingbhai she had noticed a CLW of 10 x 4 cm., on the left temple region near the eye. The eye ball had come out. She had referred the patient further to Surgical and Ophthalmic Department. She produced the injury certificate at Ex. 44.

10.2 She had also treated Desingbhai Koyajibhai and recorded a wound of seven cm., long on his right side of the head. She had also referred Desingbhai for further treatment to Surgical and Ophthalmic Department. She produced the injury certificate at Ex. 47.

10.3 In all three cases she had recorded the history of being assaulted with an axe by accused Mukeshbhai Gemabhai. She confirmed that the injuries could have been caused by the mudamal article No. 12 the axe.

11. Dr. Nilkamal Devkumar P.W. No. 14 Ex. 48, Medical Officer at C.H.C. Jetpur

had carried out the postmortem of the body of Ravindra Desingbhai. He along with Dr. Rampravesh Chaudhari had carried out such postmortem. He deposed that Dr. Rampravesh Chaudhari had left the service. In the deposition as well as P.M. report Ex. 51 following external injury was recorded:-

(i) sharp cutting wound on left side of temporal side 12 cm x 2 cm deep into brain.

12. Corresponding to such injuries, following internal head injuries were noticed:-

(i) Blood collected on layer of scalp.

(ii) Fracture of left side of temporal side longitudinal through and through 12 cm.

13. According to him, the cause of death was due to cardio respiratory arrest due to damage of brain substance and hemorrhagic shock.

14. Various articles recovered in the course of the investigation were sent for forensic analysis. The FSL report and the serological report Ex. 66 confirmed the presence of human blood of group "B" on the murder weapon axe. It was this group which belonged to the deceased.

15. This in the nutshell is the evidence on record. On the basis of such evidence learned counsel for the appellant vehemently contended that identification of the accused in commission of the offence was doubtful. The incident took place in the middle of the night. The family had animosity with other people. The accused was falsely involved.

15.1 Counsel submitted that even the motive for commission of the offence was not established. As per the FIR and the charge, the accused had borrowed money for the purpose of repayment of loan. As per the complainant, P.W. No. 6, however, the money was borrowed for the purpose of medical treatment of a person injured during an accident with the auto rickshaw.

15.2 Counsel lastly submitted that in any case conviction u/s 302 of the Indian Penal Code was not justified. He would point out that deceased Ravindra had received only one blow.

16. On the other hand, learned APP Mr. Jani opposed the appeal contending that there was overwhelming evidence on record establishing the guilt of the accused. He had come duly armed with the weapon with premeditation.

17. We may appreciate the evidence on record. The prosecution had examined eyewitnesses, in particular Desingbhai P.W. No. 6 Ex. 32, his wife Ravitaben P.W. No. 7 Ex. 34 and his daughter Rashmikaben P.W. No. 8 Ex. 35. It is true that Rekhaben P.W. No. 9 who also received the injury, cannot be stated to be an eyewitness. She candidly stated that she came to know the name of the assailant later on. Even if we omit this witness Rekhaben from consideration, as many as three eyewitnesses had deposed that on the night of the incident Mukeshbhai had given axe blows to the deceased Ravindra and other members of the family

sleeping outside. The principal witness in this respect is Desingbhai P.W. No. 6, the complainant. He knew the accused since he was residing in the same locality since years. He also knew the background inasmuch the accused had purchased a loading rickshaw and also thereafter borrowed money for repayment. According to this witness, on the night of the incident when he along with his family members were sleeping outside their house, the accused came with an axe. First blow was given to Desingbhai. He immediately woke up. He had a torch by the side of his cot. With the light of the torch he saw that Mukesh gave blows to his sons Ravindra and Rajkamal and daughter Rekha.

18. We have no reason to discard the account of this witness. The defence has not even suggested any animosity or ill-will between the witness and the accused. In fact, as per the version of the witness, which was not challenged, it was Desingbhai who had stood as guarantor for the accused to make the borrowings. If at all, therefore, Desingbhai and the accused Mukeshbhai were acquaintances. Desingbhai had absolutely no reason to falsely implicate Mukeshbhai.

19. Desingbhai clearly saw that Mukeshbhai gave blows to his daughter and two sons. He himself had received a serious head injury.

20. The version of Desingbhai was duly supported by his wife Ravita P.W. No. 7 and his daughter Rashmika P.W. No. 8. It is true that certain finer details of the precise blows given by the accused to various persons were not mentioned by these witnesses in their police statements. That by itself, however, would not mean that they were falsely implicating the accused.

21. The murder weapon was discovered at the instance of the accused himself. Serological report confirmed presence of human blood of group "B", that belonging to the deceased.

22. The medical evidence on record also supports the prosecution. We may recall that Dr. Nazima P.W. No. 13 who had treated Desingbhai, his son Rajkamal and daughter Rekha had recorded the history of these persons being assaulted by Mukesh with an axe at night when they were sleeping outside their house. According to this witness, such injuries could be caused with an axe.

23. The P.M. report and the deposition of Dr. Nilkamal P.W. No. 14 further confirm the involvement of the accused. The dead body carried a head injury which was 12 x 2 cm., in size. It was a wound which was deep upto the brain. Corresponding to such external injury the doctors had also found fracture on the temporal side of the bone which was 12 cm. long. According to the medical opinion, such injury was in ordinary course of nature sufficient to cause death. Such injury could have been caused by the murder weapon.

24. All the evidence unerringly points to the involvement of the accused. Even the genesis of the offence was duly established. The accused had purchased a loading rickshaw only on 10.8.2006 by making down payment of part of the

amount. He had to make further payment of Rs. 3,500/- by 7.9.2006. He borrowed a sum of Rs. 3,600/- from Vipulabhai P.W. No. 4 on 6.9.2006. The slight deviation in the version of the complainant P.W. No. 6 that such money was borrowed for the purpose of meeting the expenditure of a person injured during an accident would not destroy the very prosecution case. The fact that the accused had made such borrowing by pledging the pendant of his brother's wife was disclosed by the complainant to the father of the accused.

25. The prosecution has, thus, clearly established the guilt of the accused through reliable and cogent evidence which is in the form of an eyewitness account as also other corroborating evidence in the form of medical evidence as well as forensic report.

26. It may be that deceased Ravindra received only one blow. However, the intention to cause death does not always depend on number of blows. Several factors, such as the murder weapon, the force with which the blow is given, on which part of the body the injury is caused and other attendant circumstances would enable us to ascertain the real intention of the culprit. In the present case the accused had used an axe which had a handle of three ft. nine inches long and the blade which was six inches long and three inches wide. He had given a blow to the deceased on the head with a sharp side of the axe. The blow had resulted into an injury which was 12 cm long x 2 cm wide and which was brain deep. The resultant impact had caused a fracture of 12 cm. long on the skull. We have no hesitation in holding that the accused intended to cause death. In addition to the nature of weapon used the fact that the blow was given on the vital part of the body i.e. the head and with such severity there he caused a serious head injury, we also gather support from the fact that the accused had caused injuries to as many as four members of the family. All such injuries were caused with the axe and all blows were given on the head or on the temple region. Even Desigbhai, the complainant had received a head injury which resulted into skull fracture. His" daughter Rekhaven was given a blow on the temple region. Her eye ball had come out. The second son Rajkamal was also given blow on the head, but apparently with lesser force. Sum total of the discussion is that, in our opinion, the learned trial Judge committed no error in convicting the accused for the offences punishable u/s 302 and 307 of the Indian Penal Code. In the result the appeal is dismissed. R & P to be transmitted to the trial Court.