

(2017) 03 GUJ CK 0105
In the Gujarat High Court
Case No : 913 of 2016

NAGINBHAI SURABHAI DANTANI

APPELLANT

Vs

STATE OF GUJARAT

RESPONDENT

Date of Decision : 28-03-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#), [Section 374\(2\)](#) - Power to examine the accused - Appeals from convictions
[Indian Penal Code, 1860](#), [Section 114](#), [Section 323](#), [Section 504](#), [Section 506\(2\)](#) - Gujarat Police Act, 1951, Section 135

Citation : (2017) 03 GUJ CK 0105

Hon'ble Judges : Z.K.Saiyed

Bench : Single Bench

Advocate : REKHA H KAPADIA, ?N.J.SHAH

Final Decision : Dismissed

Judgement

[1] The present conviction Appeal has been filed by the appellants-original accused No.1, under Section 374(2) of the Cr. P.C., against the Judgment and order dated 30.06.2015 rendered in Sessions Case No.39 of 2013 by the learned 2nd Additional Sessions Judge, Gandhinagar, whereby the

appellants-accused were convicted for the offence punishable under Section 304 Part-II of the Indian Penal Code and sentenced to undergo ten years rigorous imprisonment with fine of Rs.30,000/-, in default of payment of fine, further simple imprisonment of one year. The applicant-accused was also given benefit of set-off. The applicant was acquitted from the charges under Sections 323, 504, 506(2) and 114 of the IPC and under Section 135 of the Gujarat Police Act.

[2] It is the case of the prosecution that the complainant- Madhiben w/o Sampatbhai Surabhai Dantani lodged the complaint with Pethapur Police Station on 09.12.2012 alleging that on 08.12.2012 in the evening there was quarrel of

the husband of her daughter (son-in-law) named Chetanbhai Praladbhai with Rakesh-accused No.2 who is the son of brother of her husband (brother-in-law) named Naginbhai- accused No.1-appellant herein on the aspect of giving money of labour work. It is alleged that keeping vengeance, on the date of the incident at about 12:00 noon, when her husband Sampatbhai-deceased was at home at that time Naginbhai- original accused No.1 had come with Danti in his hand and he inflicted a blow on the head and as a result of which there was bleeding from the head of her husband and he became unconscious and fell down. It is stated that therefore, she shouted and on hearing the shouting, her sons Rohit and Devendra came there to rescue. It is alleged that at that time, sons of the accused No.1-namely Sanjay, accused No.2 and Rakesh-accused No.3 came with sticks and they started beating to her sons by sticks. It is alleged that when she tried to save her sons, accused No.2-Sanjay inflicted a stick blow on the fist finger of her left hand and as a result of which there

was bleeding. It is alleged that since the people gathered there, the accused had run away by threatening that as today people have gathered, they have left them, but they would kill all of them. It is stated that since her husband Sampatbhai had sustained server injury, he was shifted to Sardhav Hospital and from there he was referred to Civil Hospital, Gandhinagar and thereafter, he was referred to Civil Hospital, Ahmedabad for treatment. Initially an FIR bearing C.R.No.I-116 of 2012 was registered with Pethapur Police Stations for the offences punishable under Sections 307, 323, 504, 506(2) and 114 of the IPC and under Section 135 of the Gujarat Police Act. However, during the treatment, the husband of the complainant scummed to the injury on 10.12.2006 and hence, offence under Section 302 came to be added.

[3] Thereafter, the investigation was carried out and statement of the witnesses were recorded. Inquest panchnama and place of the panchnama were drawn. Dead body was sent for postmortem and postmortem was carried out. Muddamal was also recovered. Thereafter, appellants-accused were arrested. Ravangi note was prepared and muddamal was sent to the FSL for expert opinion.

[4] After collecting the evidence by the Investigating Agency, charge-sheet was filed before the learned 4th Additional Chief Judicial Magistrate, Gandhinagar. As the said case was exclusively triable by the Court of Sessions, learned 4th Additional Chief Judicial Magistrate, Gandhinagar committed the case to learned Sessions Judge, Gandhinagar under Section 209 of the Criminal Procedure Code, which was numbered as Sessions Case No.39 of 2013.

[5] On the basis of above allegations, charge was framed vide Exh.10 against the appellants-accused and read-over and explained to the appellants-accused for the alleged offences and plea was recorded at Exh.11 to 13, wherein, appellants- accused pleaded not guilty to the charge and claimed to be tried.

[6] In order to bring home the charges against the accused person, prosecution

has examined several witnesses and also produced documentary evidences.

[7] Thereafter, after filing closing pursis by the prosecution, further statement of the appellants-accused under Section 313 of the Code of Criminal Procedure, 1973 were recorded, wherein the appellants have denied the case of the prosecution and has pleaded their innocence. The appellants have submitted that a false case is filed against them.

[8] Present appellant-accused was convicted for the offence punishable under Section 304 Parat-II of the IPC, whereas accused No.2 was convicted for the offence punishable under Section 323 of the IPC for one year simple imprisonment, with fine of Rs.1,000/-, in default further two months simple imprisonment and he was also given benefit of probation and accused No.3 was acquitted from the charges levelled against him.

[9] Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence passed by the

learned 2nd Additional Sessions Judge, Gandhinagar, the present appellant-original accused No.1 preferred this appeal.

[10] Heard Ms Rekha Kapadia, learned advocate for the appellant-accused and Mr. N.J.Shah, learned Additional Public Prosecutor for the respondent-State.

[11] Ms Rekha Kapadia, learned advocate for the appellant- accused contended that the judgment and order passed by the learned Sessions Judge is illegal, invalid and improper. She has also contended that the learned Sessions Judge has not considered the case of the defence and material evidence produced on record and has passed absolutely wrong order. She has contended that the prosecution has miserably failed to prove its case beyond reasonable doubt, yet the learned Sessions Judge has not considered the probable defence of the appellant and has wrongly convicted the appellant. She contended the incident in question has happened near the house of the deceased. One day prior to the incident, there was dispute of the accused no.3 Rakeshbhai and son-in-law of the deceased Chetanbhai. As Chetanbhai had already paid Rs.25/- to the accused No.3, there was no dispute and no amount was due and the matter was settled, at that time, the deceased was not present. On next day, when the deceased came to know about the dispute of his son in law with accused No.3, he got exited and he sent one boy for calling the accused No.1 and when accused No.1 and his sons came, the deceased got excited and started abusing and assaulted with Danti as a result of which, accused No.1-appellant herein sustained injury on head, however, the appellant-accused did not cause any injury to deceased-Sampatbhai. She contended that incident in

question took place at the spur of the moment and there was no pre-planning and there was no intention of the accused to commit murder of the deceased. Further, its not clear that who was having Danti at the time of incident. The prosecution has examined Dr. Sanjabhai Somabhai Patel at Exh.21, who has

produced medical papers at Exh.22 and medical certificate at Exh.23. The prosecution has also examined Dr. Kaushalben Dildanbhai Patel at Exh. 29, who has given case history, but she did not mention that who has given the said history and only opined that the injury received by the deceased could be possible due to muddamal article No.14 only. The prosecution has examined Laljibhai Vishnubhai Dantani at Exh.36(who draw the panchnama of scene of offence), however, the prosecution could not establish the actual place of offence. She drew attention of the witness Dr. Mustaqahmed Shaikh, examined st Exh. 44 and contended that he found injury on in frontal parital part of the left side of the head and he wrongly opined that injury shown in column No.17 could be possible due to Articles 14, 15 and 16 i.e. Danti, stick etc. All the medical experts gave opinion that only one blow was given to the deceased by the appellant-accused. She stated that there is material contradiction between the complaint, statement before the police and deposition and absolutely concocted and got up story is created by the complainant. The prosecution has examined one eye witness Vikramji Ramaji Thakore at Exh. 79, which also creates doubt. Further, no medical evidences are on record showing injury caused to the sons of the deceased. She stated that the prosecution has examined only interested witnesses and on the basis of the same, the appellant cannot be convicted and therefore, their evidence are required to be scanned minutely. She contended that the

Investigating Officer has made bias investigation keeping sympathy of the death of the complainant and has not brought the true facts on record. She contended that through Ravangi note, recovered muddamal was sent to the FSL and blood was found from the Danti, which creates shadow of doubt and therefore, circumstantial evidence is not helpful to the case of the prosecution. Therefore, considering the above aspects, the learned trial Judge committed grave error by convicting the appellant-accused for the alleged offence and therefore, she prayed to allow this appeal by quashing and setting the judgment and order of the learned trial Court.

[12] As against this, Mr.N.J.Shah, learned Additional Public Prosecutor, has contended that the judgment and order passed by the learned Sessions Judge is absolutely just and proper. He has contended that the prosecution has proved its case beyond reasonable doubt. He contended that initially the applicant was charged for the offence punishable under Section 307 of the IPC. During the treatment, the deceased succumbed to the injury and therefore, charge under Section 302 of the IPC has been added. The original accused No.2 was given benefit of probation and original accused No.3 was acquitted, but State has not challenged the said order. He contended that three doctors have found injury from the head of the deceased and opined that the same could be possible by muddamal Danti and stick only. He then contended that from the recovered muddamal i.e. Danti blood of the deceased was found. He fairly admitted that in present case, it is proved that single blow of the Danti was given to the deceased on his head, which is sufficient to cause death and therefore,

intention of the appellant was to kill the deceased. He

contended that looking to the overall facts and circumstances of the case, and evidence produced on record, the order passed by the learned Sessions Judge is absolutely just and legal and is not required to be interfered with and therefore, he prayed to dismiss the present appeal.

[13] I have gone through the impugned judgment and order passed by the learned Sessions Judge and oral as well as documentary evidence produced on record of the case. I have read the oral evidence of prosecution witness and also perused the charge framed against the appellant.

[14] In present case, the appellant-accused gave one blow of Danti on the head of the deceased-Sampatbhai, as a result of which he died. The said facts get substantiated though the evidence of complainant and eye-witnesses. Ms. Rekha Kapadia, learned advocate for the appellant argued that since prosecution witness Nos.5, 6, and 7 are relatives and interested witnesses, further that their presence is also not established through their oral versions, their deposition is not trustworthy. Looking to the injury found on the body of these prosecution witnesses, the factum of their presence at the scene of offence cannot be easily ruled out. I find their presence natural. Therefore, their statements are trustworthy, reliable and acceptable. The submission of learned advocate for the appellant that these witnesses are relatives of deceased one and therefore, their statements are not trustworthy and reliable, cannot be accepted more particularly in view of the fact that an independent witness PW-13 who is not related to the party to the proceedings has disclosed actual incident in question and the role of the appellant-accused. I

have compared the recovered muddamal from the possession of the appellant-accused i.e. Danti and sticks with the serological report. The said report shows that blood of the deceased was found from the blade of the Danti, however, the appellant-accused could not make any defence through examination of the witnesses. Identification of the accused is also proved. Injury caused to the deceased is also supported by all three medical experts in their versions, who stated that the injury caused to the deceased could be possible due to recovered muddamal Danti.

[15] I am, therefore of the opinion that the learned trial Judge has not committed any error in convicting the appellant- accused. Therefore, no interference is required. The judgment and order of conviction dated 30.06.2015 rendered in Sessions Case No.39 of 2013 by the learned 2nd Additional Sessions Judge, Gandhinagar is hereby confirmed. The present Appeal deserves to be dismissed and is hereby dismissed. Record and Proceedings, if any, be sent back to the trial Court concerned, forthwith.