
(2015) 09 GUJ CK 0051
In the Gujarat High Court
Case No : Criminal Appeal No. 1186 of 2010

Naranbhai Kanji Parmar

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 21-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 307, 364, 452

Citation : (2015) 09 GUJ CK 0051

Hon'ble Judges : M.R. Shah, J;K.J. Thaker, J

Bench : Division Bench

Advocate : Mrudul M. Barot, for the Appellant; Himanshu Patel, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

M.R. Shah, J—Feeling aggrieved and dissatisfied with the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Fast Track Court No. 5, Sabarkantha at Himmatnagar (for short, "trial Court"), Sessions Case No. 39 of 2007, by which the learned trial Court has held the appellant-original accused guilty for the offence punishable under Sections 302, 307, 452 and 364 of the Indian Penal Code, the appellant, herein,-original accused has preferred the present criminal appeal.

2. An FIR came to be lodged against the appellant-original accused by one Dinseh Martaji Parmar with Vijaynagar Police Station, being I-C.R. No. 60/2006 for the offence punishable under Sections 302, 307, 452 and 364 of the Indian Penal Code for having killed Chheniben and Shardaben and having caused injuries by axe on the injured child eye-witnesses, namely Balu Jiva Damor and Manoj Jiva Damor. It is alleged that the brother of the accused, namely Jiva, had two daughters only and no son (male child) and that Jiva got his daughter Ramilaben married and brought her husband as "Ghar Jamai" and Jiva gave his entire land to his daughter, Ramila, which was not liked by the appellant-original

accused, namely Naran. He thought he has lost the land, therefore, with a view to take revenge, he took an axe and after lifting Chhaniben (first deceased), who was washing clothes on the tank near her house, took her to veranda of her house and there he inflicted a number of blows in her. It was further alleged that, thereafter, when other persons shouted, he went towards the house of Shardaben (another deceased) and after breaking open the door of the house with axe, the appellant-original accused entered into the house, where Shardaben had taken shelter and inflicted axe blows on her. It was, further, alleged that because of the serious injuries sustained by Chhaniben and Shardaben, which were inflicted by the accused, both of them expired, subsequently. It was further alleged that, then, the accused also caused injuries on Balu and Manoj. Therefore, it was alleged that the accused committed the offence punishable under Section 302, 307, 452 and 364 of the Indian Penal Code.

3. On registration of the offence, investigation was carried out by the IO of Vijaynagar Police Station, who recorded the statements of the concerned witnesses, including the injured child eye-witnesses, namely Balu and Manoj, as well as the statement of the wife of the appellant-original accused, namely Mangli. The IO also collected the documentary evidences. He prepared panchanama of the place of incident as well as the inquest panchnama. The IO also collected PM report of Chhaniben and Shardaben and their cause of death certificates. The IO, then, collected injury certificates of the injured child eye-witnesses, Balu and Manoj. THE IO also sent the weapon used by the appellant-original accused to FSL. Thereafter, on completion of the investigation, as it was primarily found that the accused committed the murder of Chhaniben and Shardaben and also caused injuries to Balu and Manoj (child witnesses), the Investigating officer of the Vijaynagar Police Station filed a charge-sheet against the accused for the aforesaid offences before the learned JMFC, Khedbrahma. However, as the case was exclusively triable by a Court of Sessions, the learned JMFC, Khedbrahma, committed the case before the learned trial Court, Sabarkantha at Himmatnagar. The learned Additional Session Judge, Sabarkantha at Himmatnagar, framed charges against the appellant-original accused vide Exhibit-4 for the offences punishable under Sections 302, 307, 452 and 364 of the Indian Penal Code. As the accused pleaded not guilty, he came to be tried by the learned trial Court for the aforesaid offences.

4. To prove the case against the appellant-original accused, the prosecution examined as many as 20 witnesses, as under;

5. Through the aforesaid witnesses, the prosecution also brought on record, the following documentary evidences;

6. After closure of the evidence of the prosecution, further statement of the appellant-original accused under Section 313 of the Criminal Procedure Code came to be recorded. In the further statement, there was total denial by the appellant-original accused of having committed the offence.

7. Thereafter, on appreciation of the evidence on record, both oral as well as documentary, by the impugned judgment and order, the learned trial Court has held the accused guilty for the offence for which he was tried and by the impugned judgment and order convicted and sentenced the appellant-original accused for the offence punishable under Section 302 and sentenced him to undergo imprisonment for life and to pay fine of Rs. 2000/- and in default to undergo further imprisonment for six months, for the offence under Section 307 of the Indian Penal Code to undergo imprisonment for life and to pay fine of Rs. 1500/- and in default to undergo further imprisonment for three months, for the offence under Section 452 of the Indian Penal Code to undergo imprisonment for seven years and to pay fine of Rs. 1000/- and in default to undergo further imprisonment for three months. Here, it may be noted that, though, the appellant-accused was also convicted for the offence punishable under Section 364 of the Indian Penal Code, since, he was already convicted for the offence punishable under Section 302 of the Indian Penal Code, the trial Court did not inflict any separate sentence for the same on the appellant-original accused. Further, the trial Court has observed that all the sentences shall run concurrently.

8. Feeling aggrieved and dissatisfied with the impugned judgment and order of conviction passed by the trial Court, the appellant-original accused has preferred the present Criminal Appeal.

9. Shri. Mrudul Barot, learned Advocate appearing on behalf of the appellant-original accused, submitted that the learned Judge has committed a grave error in holding the appellant-accused guilty for the offence under Section 302 as well under Sections 307, 452 and 364 of the Indian Penal Code. It is submitted that the findings recorded by the learned trial Court, while holding the accused guilty for the offence, has misread the entire evidence on record. It is submitted that while holding the appellant guilty, the learned trial Court has not properly appreciated the evidence on record, both oral as well as documentary. It is submitted that the learned trial Court ought to have appreciated that there are material omissions and contradictions in the oral testimonies of the prosecution witnesses. It was submitted that, therefore, the appellant-original accused is wrongly held guilty for the murder of Chhaniben and Shardaben and for inflicting the injuries on the child eye-witnesses. It was submitted that the learned trial Court ought to have appreciated the fact that panchas of discovery of muddamal weapon have not supported the panchnama of recovery of weapon, which the appellant-original accused alleged to have used. It was submitted that, therefore, the learned trial Court ought to have acquitted the accused by giving him the benefit of doubt.

10. It was further submitted by Shri. Barot, learned Advocate appearing on behalf of the appellant-original accused, that the trial Court has materially erred in relying on the depositions of Balu and Manoj, injured eyewitnesses, who were examined as PW Nos. 7 and 9. It was submitted that the depositions of both the witnesses are full of contradictions, and therefore, learned trial Court ought not

to have relied on the depositions of both the aforesaid eye-witnesses. Making the above submissions, it was requested to allow the present appeal and to quash and set aside the impugned judgment and order of conviction and sentence passed by the learned trial Court. Alternatively, it was prayed that the accused be released by giving him the benefit of doubt.

No further submission was made.

11. Present appeal is opposed by Shri. Himanshu Patel, learned APP appearing on behalf of the State. He vehemently submitted that the findings recorded by the learned trial Court, holding the appellant-original accused, guilty for the offence punishable under Sections 302, 307, 452 and 364 of the Indian Penal Code, is on appreciation of the evidence on record, both oral as well as documentary. It was submitted that the findings recorded by the trial Court, while holding the appellant-original accused guilty for the offences punishable under Sections 302, 307, 452 and 364 of the Indian Penal Code, cannot be said to be perverse. It was submitted that in the present case there are a number of eyewitnesses including injured child eye-witnesses, namely Balu (PW-7), Manoj (PW-9). It was submitted that most important eye-witness of all other witnesses is Mangli (wife of the accused), who is examined at Exhibit-12. It was also submitted that the prosecution witnesses are, as such, cross-examined by the defence thoroughly and all the prosecution witnesses have fully supported the case of the prosecution. It is submitted that there is PM report and Inquest panchnama of Chhaniben and Shardaben and the cause of death was injuries found on the dead bodies of Chhaniben and Shardaben, and therefore, the learned trial Court rightly held that the death of Chhaniben and Shardaben are homicidal deaths. It was submitted that, therefore, no error is committed by the trial Court in holding the appellant-original accused guilty for the offence for which he is convicted, i.e. for the offence under Section 302, 307, 452 and 364 of the Indian Penal Code.

Making the above submissions, it was requested to dismiss the present appeal.

12. We have heard learned Advocate for the appellant-original accused and the learned APP on behalf of the State. We have scanned, appreciated and re-appreciated the entire evidence on record, both oral as well as documentary. At that outset, it is required to be noted that the appellant, herein,-original accused has been convicted by the learned trial Court for the offence punishable under Sections 302, 307, 452 and 364 of the Indian Penal Code for having committed the murder of the deceased Chhaniben and Shardaben and for causing injuries on the injured child eye-witnesses Balu and Manoj by axe.

13. Having re-appreciated the entire evidence on record, more particularly, the deposition of Dr. Hiteshkumar Daljibhai Tabiyar, PW-1(Exhibit-10), Dr. Kinjalben Hashmukhrai Doshi, PW-2(Exhibit-19), Dr. Manishbhai Hamrabhai Suvera, PW-3(Exhibit-25) and on considering the postmortem report of the deceased Chhaniben (Exhibit-16) as well as the cause of death certificate of the deceased

Chhaniben (Exhibit-17) and PM report of the deceased Shardaben (Exhibit-11) and Cause of Death Certificate of Shardaben Exhibit-12, we concur with the finding recorded by the trial Court that deaths of both Chheniben and Shardaben were homicidal deaths.

14. Now, so far as the offence committed by the appellant, herein,-original accused, punishable under Section 302 of the Indian Penal Code is concerned, at the outset it is required to be noted that, as such, there are a number of eye-witnesses as well as injured eye-witnesses. Balu Jiva, who was an injured child eye-witness, has been examined by the prosecution as PW-7, Exhibit-35. PW-7 has categorically stated, in his deposition, that the accused had inflicted blows of axe on him as well as on his brother, namely Manoj, i.e. PW-9. This witness has been thoroughly cross-examined by the defence, however, he has fully supported the case of the prosecution. The prosecution has next examined Manoj Jiva- PW-9, who was another injured child eye-witness. PW-9 also stated that accused had inflicted axe blow on him. This witness also identified the axe used by the accused in committing the offence. This witness was also thoroughly cross-examined by the defence, however, the defence has not been able to bring anything against the case of the prosecution, and therefore, there is no reason to disbelieve the evidence of the injured child eye-witnesses, Balu (PW-7) and Manoj (PW-9).

15. Pravin Rupsibhai Asari, who has been examined by the prosecution as PW-10 at Exhibit-39, is another child eyewitness. He specifically stated in his examination-in-chief that Naran Kaka, i.e. the appellant, herein, the original accused, inflicted axe blows on his mother, i.e. the deceased Shardaben, while she was in the house. This witness is fully cross-examined by the defence, however, he stood by what he stated in his examination-in-chief. PW-10 fully supported the case of the prosecution that it was the appellant, herein,-original accused, who inflicted axe blows on Shardaben. There is nothing to disbelieve this witness.

16. The prosecution, then, examined Radhaben Thavraji Bhuraji Asari as PW-11, Exhibit-40, and she, in her examination-in-chief, clearly stated that it was the appellant, herein,-original accused, who inflicted the axe blows on Chhaniben, and thereafter, on her aunt, Shardaben. PW-11 was thoroughly cross-examined by the defence, however, she also stood firm on what she has stated in her examination-in-chief. Thus, the prosecution has been successful in establishing and proving that it was the appellant, herein,-original accused, Naran, who killed Chhaniben and Shardaben and inflicted injuries on Balu and Manoj, i.e. the injured child eye-witnesses.

17. Mangliben, who happens to be the wife of the appellant, herein,-original accused, has been examined by the prosecution as PW-12 at Exhibit-41. Despite the fact that PW-12 happens to be the wife of the appellant, herein,-original accused, she fully supported the prosecution case and stated that her husband had inflicted axe blows on Chhaniben, just in front of her house. She has been

cross-examined by the defence at length, but, she stood firm on what has been stated by her in her examination-in-chief.

18. Under the circumstances, the prosecution has been successful in establishing and proving, by leading cogent and reliable evidence, that the appellant-original accused, inflicted axe blows on the deceased Chhaniben and Shardaben and caused their death and also caused injuries on the injured child eyewitness, Balu and Manoj, who have been examined by the prosecution as PW Nos. 7 and 9, respectively.

19. Now, so far as the contention of Shri. Barot, learned Advocate appearing on behalf of the appellant-original accused, that there are material contradictions in the evidence of the witnesses examined by the prosecution, and therefore, the appellant-original accused be given benefit of doubt is concerned, it is required to be noted that, as such, Shri. Barot has not been able to point out any contradiction, much less any material contradiction, in the depositions of the prosecution witnesses. Merely submitting that there are contradictions and omissions in the depositions of the prosecution witnesses, and therefore, the appellant, herein,-original accused, be given the benefit of doubt is not sufficient. But, such contradictions and omissions in the evidence of the prosecution witnesses have to demonstrated by the defence. Even otherwise, having gone through the entire material on record, we do not find any omissions or contradictions in the evidence of the prosecution witnesses. On the contrary, the deposition of each prosecution witness stands corroborated by the evidence of another prosecution witness. Under the circumstances, we find no substance in the said submission made by Shri. Barot and same requires to be rejected and is rejected.

20. Now, so far as the submission of Mr. Barot that the prosecution has failed to prove the motive of the offence, and therefore, the appellant-original accused requires to be given the benefit of doubt is concerned, we find no substance in the said submission. As observed and discussed, herein above, the alleged offence took place during the broad day light and there are direct evidences against the appellant-original accused, showing his involvement in the alleged offence. Under the circumstances, the motive aspect is not significant. Apart from the above, as such, on considering the entire evidence on record, the motive is already established and proved by the prosecution and the motive was that the brother of the accused, namely Jiva, had only two daughters and no male child. Jiva gave his entire land to his daughter Ramila, which was not liked by the accused, as he expected that he will get the land of his brother. Thus, in fact, the motive has been proved by the prosecution.

21. In view of the above discussion and for the observations made, herein above, this appeal fails and same is DISMISSED. The conviction and the sentence inflicted by the trial Court vide judgment and order, Dated: 28.08.2008, on the appellant-original accused, stands CONFIRMED. R&P be sent back to the concerned Court, forthwith.