
(2009) 07 GUJ CK 0067
In the Gujarat High Court
Case No : Criminal Appeal No. 117 of 2003

Paka @ Prakash Dhirubhai Gohil	Vs	APPELLANT
State of Gujarat and Another		RESPONDENT

Date of Decision : 02-07-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 114, 299, 300, 302, 304

Citation : (2009) 07 GUJ CK 0067

Hon'ble Judges : H.B. Antani, J; D.H. Waghela, J

Bench : Division Bench

Advocate : M.J. Buddhbhatti, Nos. 1 - 3, for the Appellant; Chetna Shah, APP for Opponent No. 1, for the Respondent

Judgement

D.H. Waghela, J.—All the three appellants are convicted for the offence punishable under Sections 302, 504 read with Section 114 of the

Indian Penal Code by impugned judgment dated 10.01.2003 of learned Joint District Judge, F.T.C. No. 3, Nadiad in Sessions Case No. 29 of 2000.

2. Learned Counsel Mr. M.J. Buddhbhatti, appearing for the appellants, restricted the appeal to challenging conviction u/s 302 and urged

reduction of sentence, particularly, in view of the fact that appellant Nos. 1 and 2 had already undergone nearly 8 years of imprisonment and

appellant No. 3 had already undergone nearly 4 years of imprisonment. It was submitted by Mr. Buddhbhatti that, by all account, there was a free

fight, injuries on both sides after many years of enmity and cross complaints filed in the same incident, wherein all the three appellants were injured.

He, therefore, broadly submitted that the case of the appellants was either, at the worst, of exceeding the right of private defence or homicide in

sudden fight upon a sudden quarrel. He pointed out from the evidence on record that all the three appellants were, as per medical certificates at

Exhs.34, 35 and 36, injured. Right Premier Tooth of appellant No. 1, aged 21 at the time was broken, while appellant No. 2 had contused

lacerated wound on the left hand and appellant No. 3 had suffered injury on the left middle finger, due to which, swelling was marked. All the three

appellants had given history of assault on them at about 7:00 am on the date of incident i.e. on 14.09.1999. It was submitted on that basis that

appellant Nos. 1 and 2, who were alleged to have held knife and caused death of victim could, at the worst, be convicted u/s 304 and sentenced

accordingly, whereas, appellant No. 3 was only alleged to have thrown a brick injuring the original complainant and could be convicted at the

worst for the offence punishable u/s 337 of I.P.C.

3. It was seen from the deposition of main eye-witness, father of the deceased (PW-1, Exh.39) that, admittedly, there was an incident at 7:15 near

the residence of the complainant and the appellants, wherein quarrel was started about the passage of water by a sewer. He deposed that his

deceased son, Mukesh, was asked by the appellants to come towards outskirts of the village and when Mukesh was going towards bus-stand in

his rickshaw, the appellants intercepted him and, hearing shout of Mukesh, the complainant also reached there. At that time, appellant No. 1 dealt

a blow with the knife on the neck of the deceased and appellant No. 2 dealt a stab wound on the left abdomen with a knife. Third blow of the

knife was dealt by appellant No. 2 on the hand of the deceased. Besides that appellant No. 3 had thrown stones, one of which hit the complainant

on his back. While the deceased was alive, he was taken to the police station and then to Krishna hospital, where he was declared to have died. In

his cross-examination, he admitted that persons from both sides were near relatives and neighbours but were not communicating and both were

keeping buffaloes which caused the problem of passage of sewage.

4. The doctor, performing P.M. upon the deceased, namely, Dr. Satish Patel (PW-4 Exh.47), deposed that the deceased had following injuries:

1. Punctured wound, 1.8 cms. lateral to thyroid cartilage over right side on neck

Oval in shape Direction is backward and going medially Measuring 1.6 cms. x 1.4 cms. x 3.1 cms.

2. Stab wound, 8.1 cms. below and 0.5 cms. lateral to right nipple, on chest.

Oval in shape. Down wound and backward in direction measuring 1.5. cms. x 0.7 cms. x 5.8 cms.

3. Incised wound over inner border (Ulna border) of left palm. measuring 3.1 cms. x 0.3 cms. x 1.1 cms.

4. CLW on dorsum of left forearm measuring 2.1 cms. x 1.0 cms. x 0.8 cms. All injuries are ante mortem in nature

5. Having regard to the above relevant facts and material, it could not be gainsaid that two of the injuries inflicted upon the deceased were fatal in

nature and weapon like knife was used by appellant Nos. 1 and 2 whereas, the deceased was alleged to have assaulted appellant No. 1 with a

spade and broken his teeth. It emerged from the perusal of the evidence that there was a fight and cross cases and the version of the prosecution

was not entirely believable. At the same time, a fight and a scuffle had started without any premeditation and injuries were caused in the heat of

passion. The injuries suffered by the appellants were not serious. They had assaulted the deceased with weapons like knives and injured the victim

on vital parts of his body.

6. As recently held by Supreme Court in Laxminath Vs. State of Chhattisgarh,

10. ...In Clause (3) of Section 300, instead of the words `likely to cause death' occurring in the corresponding Clause (b) of Section 299, the

words ""sufficient in the ordinary course of nature"" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and

a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage

of justice. The difference between Clause (b) of Section 299 and Clause (3) of Section 300 is one of the degrees of probability of death resulting

from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of

the gravest, medium or the lowest degree. The word `likely' in Clause (b) of Section 299 conveys the sense of probable as distinguished from a

mere possibility. The words ""bodily injury...sufficient in the ordinary course of nature to cause death"" means that death will be the ""most probable

result of the injury, having regard to the ordinary course of nature....

11. For cases to fall within Clause (3), it is not necessary that the offender

intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature....

13. The ingredients of clause "Thirdly" of Section 300, IPC were brought out by the illustrious Judge in his terse language as follows:

To put it shortly, the prosecution must prove the following facts before it can bring a case u/s 300, "thirdly".

First, it must establish, quite objectively, that a bodily injury is present.

Secondly, the nature of the injury must be proved. These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say that it was not accidental or unintentional,

or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the

ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

7. In the facts of the present case, the length of the blade of knives, which were recovered as muddamal and examined by F.S.L., (Exh.32), was

found to be 11 cms. By the wounds, as described hereinabove, dealt by the assailant, they could be attributed the intention of causing such bodily

injury, as was likely to cause death; but in absence of any evidence of premeditation and the evidence of sudden fight upon a quarrel and the

injuries upon the appellants, appellant Nos. 1 and 2 could be convicted of culpable homicide not amounting to murder and punished u/s 304 of

IPC. Similarly, in absence of any cogent and reliable evidence of abetment or active role in inflicting the fatal injuries, appellant No. 3 could be

punished for the injuries caused by him by throwing of stone for the offence punishable u/s 337 of IPC.

8. Learned A.P.P. Ms. Chetna Shah, while supporting the judgment, submitted that injuries to the appellants were not serious and the two

incidents of quarrel regarding sewer and attack on the victim were rightly treated separately by the trial court. It was, however, seen from the

impugned judgment that both the incidents had happened in proximity, not only in terms of time but in terms of location, and a free fight clearly

appears to have happened between two groups and, admittedly, separate Sessions trial was also conducted pursuant to the complaint of the

appellants which was registered in the same police station vide C.R. No. II-3030 of 1999 at around 9:15 am.

9. In the above facts, the appeal is partly allowed and altering the conviction and sentence, the impugned judgment and order is modified to the

extent that appellant Nos. 1 and 2 are convicted for the offence punishable u/s 304 and sentenced to rigorous imprisonment for 10 years and

appellant No. 3 is convicted for the offence punishable u/s 337 of IPC and sentenced to imprisonment for three months. Appellant Nos. 1,2 and 3

are also sentenced to pay fine of Rs. 500/- each, which, in fact, is paid to Nazir, District Court, Nadiad on 20.01.2003, pursuant to the impugned

judgment.