

(2008) 08 GUJ CK 0076
In the Gujarat High Court
Case No : Criminal Appeal No. 690 of 2001

Prabhubhai Jagabhai Bhil

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 13-08-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374
Penal Code, 1860 (IPC) — Section 302

Citation : (2008) 08 GUJ CK 0076

Hon'ble Judges : Z.K. Saiyed, J;A.M. Kapadia, J

Bench : Division Bench

Advocate : J.M. Buddhbhatti, appointed by Legal Aid Committee, for the Appellant; K.C. Shah, APP, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Kapadia, J.—Challenge in this appeal filed u/s 374 of the Code of Criminal Procedure ("the Code" for short) is to the correctness of the judgment and order dated 27.7.2001 rendered in Sessions Case No. 253 of 2000 by the learned Additional Sessions Judge, Baroda by which the sole appellant/accused ("the accused" for short) has been convicted for commission of the offence of murder of his wife Kashiben punishable u/s 302 of the Indian Penal Code ("IPC" for short) and sentenced to imprisonment for life.

2. The prosecution case as disclosed from the FIR and unfolded during trial is as under:

2.1. P.W.1, Sumitraben Prabhubhai, aged 15 years, daughter of victim-deceased Kashiben and accused Prabhubhai Jagabhai Bhil, has lodged a complaint before P.W.9, Pramodsinh Fatehsinh Gohil, PSI of Nasvadi Police Station, wherein, inter alia, she has alleged that she is residing at village Rengani, Taluka Nasvadi along with her parents and was doing household works and labour. They are three brothers and sisters. She is the eldest, her brother Laxman is younger to her and Ramila is younger to him. Her father had gone to do labour at village Gothavat,

at about 3 O'clock, her brother Laxman had gone to Sim for getting the goats to graze the grass and the complainant, her mother Kashiben and her younger sister Ramila were present at their house.

At about 5 O'clock in the evening on the day of the incident, her father had returned from his labour work and when he having given twenty five rupees to her mother, told to purchase tea and sugar and to prepare tea, her mother told that such rupees are earned by her everyday and added what she had to do with his money. So there was exchange of words between her mother and father. Thereafter she had gone to play with the other girls Gitaben and Dholkiben of the street behind her house and in no time, her younger sister Ramila shouted from the house saying that Mummy was killed. On hearing the shouts, she rushed to her house and saw her father beating her mother Kashiben with a wooden log. So she having said to stop beating, snatched away the log of wood from the hands of her father and her father having taken a spade made of iron which was lying in the house, gave four-five blows with the front part of the spade one after another on the head of her mother; her mother having been caught in blood stains, had fallen on the ground and at the time of incident, she had gone to protect her mother but her mother had died in no time. So when she took her head in her lap, her clothes had got blood spots. As her mother had died, she had informed the incident to Bava Dalsukhbhai residing near her house and when the Sarpanch was informed about the incident by Mukeshbhai, he came there and she accompanied him to the police station to lodge the complaint in respect of the offence. As the murder of her mother Kashiben has been caused by her father by giving blows with the wooden log and with the front part of the spade, she filed the complaint at Nasvadi Police Station.

2.2. The aforesaid complaint was recorded by P.W.9, Pramodsinh Fatehsinh Gohil and registered the offence against the accused vide CR No. I-63 of 2000 at Nasvadi Police Station for commission of offence punishable u/s 302 IPC. The said complaint is on record at Ex.8. After registration of the complaint, he started investigation. He informed the Dy. S.P. Dabhoi about the said incident and visited the place of offence. He held inquest on the dead body of Kashiben; sent the dead body for post mortem examination to the Medical Officer, Tankhala; drawn panchnama of scene of offence in presence of panchas; collected sample earth and control earth from the place of offence; recovered wooden log as well as spade used for commission of the offence having blood stain; recovered the blood stained clothes of the complainant, recorded statements of witnesses; recovered the blood stained clothes put on by deceased Kashiben at the time of incident after the post mortem examination; the accused was arrested and sent the muddamal articles to FSL for chemical analysis.

2.3. On receipt of the post mortem report and FSL report, as sufficient incriminating evidence was found against both the accused, he filed charge sheet against the accused in the court of learned JMFC, Nasvadi.

2.4. As the offence u/s 302 IPC is exclusively triable by a Court of Sessions, the

learned JMFC, Nasvadi committed the case to the Court of Sessions, Baroda.

2.5. The learned Additional Sessions Judge, Baroda ("the trial Court" for short) to whom the case was made over for trial, framed charge against the accused for commission of the offence punishable u/s 302 IPC. The accused pleaded not guilty to the charge and claimed to be tried and thereupon he was put to trial in Sessions Case No. 253 of 2000.

2.6. To prove the culpability of the accused, the prosecution has examined 9 witnesses consisting of the complainant, panch witnesses, doctor who performed autopsy, investigating officer, etc., and relied upon their oral testimonies.

2.7. To prove the case against the accused, the prosecution has also produced a number of documents such as complaint, post-mortem report, FSL report, panchnamas, etc., and relied upon the contents thereof.

2.8. After recording of the evidence of the prosecution witnesses was over, the trial Court explained to the accused the circumstances appearing against him and recorded his further statement u/s 313 of the Code. In his further statement, he denied the case of the prosecution in its entirety. He has stated that he is innocent and his wife was killed by somebody. His daughter Sumitra with the help of Mukesh and villagers has wrongly trapped him in the murder case. He has stated that there was no quarrel or dispute between him and his wife. However, he has neither led any evidence nor did he examine any witness in support of his defence.

2.9. On appreciation, evaluation, analysis and scrutiny of the evidence on record, the trial Court came to the conclusion that Kashiben has died a homicidal death and the accused is the author of the injuries caused to the deceased with wooden log and back side of the spade. The trial court has held that the prosecution has successfully established the complicity of the accused for commission of murder of Kashiben. On the aforesaid finding, the trial court convicted the accused for the offence u/s 302 IPC and he has been sentenced accordingly to which reference is made in the earlier paragraphs of this judgment, which has given rise to instant appeal at the instance of accused.

3. Mr. J.M. Buddhbhatti, learned advocate appointed by the Legal Aid Committee for the accused, has fairly conceded that Kashiben has died a homicidal death. However, according to him, there is contradiction with regard to the time of the incident and, therefore, possibility of falsely roping the accused in a murder case of his wife cannot be ruled out. He therefore submitted that the impugned judgment and order of conviction and sentence deserves to be quashed and set aside by allowing the appeal. He, therefore, urged to allow the appeal.

4. Per contra, Mr. K.C. Shah, learned APP for the respondent - State of Gujarat has submitted that there is no infirmity or illegality committed by the trial Court in recording the conviction and sentence against the accused. Therefore, no interference is called for in the impugned judgment and order. According to him,

there is no reason for the complainant Sumitraben to falsely give complaint and to depose in Court against her father. From her evidence alone the complicity of the accused is proved beyond all doubts. She has categorically stated that the accused is the assailant who murdered her mother and there is no contradiction in the complaint as well as in her oral testimony. He, therefore, urged to dismiss the appeal by confirming the judgment and order of conviction and sentence recorded against the accused by the trial court.

5. This Court has considered the submissions advanced by Mr. J.M. Buddhbhatti, learned advocate for the accused and Mr. K.C. Shah, learned APP for the respondent - State of Gujarat and perused the impugned judgment and order. This Court has undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record, which is read and re-read by the learned advocates of the parties with reference to broad and reasonable probabilities of the case. This Court has examined the entire evidence on record for itself independently of the learned Judge of the trial Court and considered the arguments advanced on behalf of the accused and infirmities pressed, scrupulously with a view to find out as to whether the trial Court has rightly recorded the order of conviction and sentence.

6. There is no dispute to the fact that Kashiben has died a homicidal death. Even the learned advocate for the accused has not raised any dispute in this regard. To prove this fact, the prosecution has examined P.W.8, Dr. Maheshkumar Nagjibhai Sharma, who performed the post mortem examination on the dead body of Kashiben, at Ex.23. He has issued post mortem report which is on record at Ex.25.

6.1. On a conjoint reading of the oral testimony of P.W.8, Dr. Maheshkumar Nagjibhai Sharma, Ex.23 and the post mortem report at Ex.25, it is seen that there was a fracture on the right side of occipital bone 10 to 12 cm long and 5-6 cm broad size and brain part came out from the wound on the skull and the cause of death was due to head injury followed by fracture of scalp bone.

6.2. In view of the aforesaid evidence, according to us, the prosecution has established that Kashiben has died a homicidal death. We are, therefore, of the opinion that the trial court has rightly held that Kashiben has died a homicidal death and we accordingly confirm the said finding and hold that Kashiben died a homicidal death.

7. Now the next question is whether the accused is the author of injuries caused to deceased Kashiben.

7.1. This is a case of murder of his own wife by the accused and the solitary eye witness is a female child named Sumitra, who is the daughter of the victim and the accused, at the relevant time aged 15 years, who witnessed the gruesome incident with her own naked eyes. To prove this, the prosecution has mainly relied upon the evidence of P.W.1, Sumitra Prabhubhai Bhil, Ex.7. She has inter alia testified as per the narration given by her in the complaint. She has deposed

that her father had inflicted 2/3 blows on the head of her mother with a wooden log and as she caught hold of the wooden log, which was in her father's hand, her father lifted a spade and inflicted five blows with its blunt portion on her mother Kashiben. She has also given the motive for the incident. She has testified that on the day of the incident, her father came home and gave Rs. 25/- to her mother for the purpose of purchasing tea and sugar for preparing tea. Thereupon her mother told him that "she is getting such amount every day and what she should with his money" and thereupon the quarrel took place and the accused inflicted injuries to Kashiben as a result of which she died. She has identified her signature in the complaint. She has also stated that the said complaint is lodged by her in Nasvadi Police Station.

7.2. It may be noted that this witness was cross-examined at length by the learned advocate for the defence but nothing substantial could be brought out which would impeach the credibility of her evidence and she has successfully withstood the test of cross-examination.

7.3. On reappraisal of the evidence of the complainant, according to us, it is clear that the complainant had witnessed the horrendous incident of murder of her mother by her father and she was so unfortunate a child that she had to lodge complaint in the police against her own father and also to depose in Court against him testifying that he is the murderer of her mother. She tried to save her mother but the accused threatened her that he would kill her also. As the complainant caught hold of the wooden-log in the hand of the accused, he took the spade and assaulted Kashiben. Because of the assault and the resultant injuries, Kashiben fell down and the complainant took her on her lap and the hot blood that rained down from the deep gush in her head, stained the clothes of the complainant. The complainant is the child of the victim and the accused. It is not very difficult to understand the agony she had undergone. On the one hand she has lost her mother and on the other she has also lost the company and protection from her father, at the tender age of 15 years. But, inspite of all these facts, she has deposed what she had witnessed on the day of the incident and we have no hesitation in holding that her evidence is trustworthy and there is no reason to discard it.

8. It is settled position of law that evidence of solitary eye witness is sufficient to base order of conviction. In this connection, it would be appropriate to refer to the following two decisions of the Supreme Court:

8.1. In the case of Kunju @ Balachandran Vs. State of Tamil Nadu, the Supreme Court has held that conviction on the basis of the testimony of the sole eyewitness is permissible where the testimony of sole eyewitness was not shaken although he was cross-examined at length and the same was corroborated by the evidence of another witness who did not support the prosecution version in toto.

8.2. In the case of Krishna Mochi and Others Vs. State of Bihar, the Supreme

Court has held that credible evidence of even a solitary witness can form the basis of conviction.

9. According to us, the evidence of solitary eye witness Sumitraben is sufficient to establish the complicity of the accused for the commission of offence of uxoricide. However, to corroborate her evidence, the prosecution has examined P.W.4, Dalsukhbhai Jethabhai, Ex.19/A; P.W.5, Ramabhai Hirabhai Tadvi, Ex.19 and P.W.7, Sukhrambhai Karsanbhai, Ex.22.

9.1. From the oral testimony of P.W.4, Dalsukhbhai Jethabhai, Ex.19/A it is seen that he has been informed about the incident by Sumitraben. So far as P.W.5, Ramabhai Hirabhai Tadvi is concerned, he is the Sarpanch of the village and he was informed by Mukeshbhai about the incident that the accused has killed his wife and therefore he went to the house of the accused. So far as the oral testimony of P.W.7, Sukhrambhai Karsanbhai, Ex.22 is concerned, he was informed by P.W.1, Sumitraben and therefore he went to her house and so the dead body of Kashiben.

9.2. On reappraisal of the evidence of the above three witnesses, it is seen that they immediately rushed to the scene of occurrence where they saw the accused sitting in the house and the dead body of deceased.

10. To further corroborate the prosecution case, the prosecution has also relied upon the FSL reports which are produced at Exs.30 and 31. The blood group of Kashiben was A. It is seen from the FSL reports that blood of A group was found on the spade and wooden log used by the accused for commission of murder of Kashiben. Blood of same group was found on all the articles which were recovered by drawing panchnamas by the investigating officer from the scene of offence and also on the clothes put on by the deceased at the time of incident which were recovered after post mortem examination was over. The aforesaid circumstances also corroborate the evidence of the solitary eye witness P.W.1, Sumitraben. Thus, the more one go into the evidence of the prosecution, the more clear it becomes that the accused is guilty of the offence of uxoricide.

11. In view of the clinching and satisfactory evidence of the prosecution witnesses, complicity of the accused in commission of the offence of murder of Kashiben has been duly established. Suffice it to say that the trial Court has given cogent and convincing reason for convicting the accused for commission of offence u/s 302 IPC and Mr. J.M. Buddhbhatti, learned advocate for the accused could not dislodge the said reasons given by the trial Court.

12. We find ourselves in complete agreement with the finding, ultimate conclusion and the resultant order of conviction and sentence recorded by the trial Court, as according to us, no other finding, conclusion and order, is possible except the one reached by the trial Court, which is required to be affirmed by us.

13. Seen in the above context, there is no reason or justifiable ground to interfere with the impugned judgment and order of conviction and sentence

passed by the trial Court, and as the appeal lacks merit, it deserves to be dismissed by confirming the judgment and order passed by the trial Court.

14. For the foregoing reasons, the appeal fails and accordingly it is dismissed. Resultantly, the judgment and order of conviction and sentence dated 27.7.2001 rendered in Sessions Case No. 253 of 2000 by the learned Additional Sessions Judge, Baroda, is hereby confirmed and maintained.