
(2017) 01 GUJ CK 0189
In the Gujarat High Court
Case No : 1853 of 2012

PRADIPBHAI KOYABHAI SOLANKI & ORS.

APPELLANT

Vs

STATE OF GUJARAT

RESPONDENT

Date of Decision : 27-01-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 114](#),
[Section 302](#), [Section 304](#), [Section 34](#), [Section 323](#), [Section 325](#) - Abettor present when offence is committed -
Punishment for murder - Punishment for culpable homicide not amounting to murder -
Acts done by several persons in furtherance of common intention - Punishment for
voluntarily causing hurt - Punishment for voluntarily causing grievous hurt
[Bombay Police Act, 1951](#), [Section 135](#) -
Penalty for contravention of rule or directions under sections 37, 39 or 40

Citation : (2017) 01 GUJ CK 0189

Hon'ble Judges : Akil Kureshi, Biren Vaishnav

Bench : Division Bench

Advocate : H L Patel, Gajendra P Baghel, Pratik B Barot, H K Patel

Final Decision : Dismissed

Judgement

1. This appeal is filed by the original accused who have been, by the impugned judgement of the learned Additional District and Sessions Judge, Panchmahal dated 29.09.2012, convicted for the offences punishable under sections 302, 325, 323 of IPC and under section 135 of the Bombay Police Act. They have been sentenced to life imprisonment for offence under section 302 and lesser sentences are imposed for the remaining offences. During pendency of the appeal, accused No.2 Dilipbhai Koyabhai Solanki expired. Appeal qua him, therefore, has become infructuous.

2. Briefly stated, the prosecution version was that, on the date of the incident i.e. on 14.10.2011 at about 8 O'clock in the evening, due to previous animosity, the four accused attacked Narvatsinh Pratapsinh Solanki, PW 11, causing serious injuries. They, then severely beat up his adopted son Rangeet who died about a

day later during treatment. The accused were carrying weapons such as iron pipe, stick, log of wood and a kitchen implement called vataniyu which is used for crushing or pulping and is made of stainless-steel or iron. In the present case, the said implement was about one and quarter foot long and was of a thickness of more than one inch.

3. PW 2, Shardaben Parvatbhai, Exh 12 claimed to be an eyewitness and was also the first informant. She deposed that deceased Rangeet was her son. However, since her brother-in-law Narvatsinh did not have children, he had adopted Rangeet informally. On 14.10.2011, between 8:00 and 9:00 at night, when she received a phone from her brother-in-law, she had gone to the field where the incident had taken place. The accused had smashed her brother-in-law's hands and legs and were beating up her son. Pradipbhai Solanki, accused No.1 had iron rod with which he had given a blow to Rangeet on his head. Dilipbhai Solanki, accused No. 2 had a stick with which he had beaten her son on the body. Harshadbhai @ Lalo Pravinbhai Solanki, accused No. 3 also had a stick with which he had broken her son's leg. Alpeshsing @ Arvind Prabatsinh @ Nanbhai Solanki had an iron vataniyu with which he gave blows on the chest. Pradip Solanki had given a blow with an iron rod to Madhuben, her sister-in-law and then he hit her on her thigh. Harshadbhai had also given a stick blow to Arvind, one of the boys staying in the locality and to Vinod, son of her sister. After this, all four people ran away. She had given complaint before the police which was produced at Exh 13. In the cross examination, she stated that deceased Rangeet lived with Narvatbhai Solanki and his wife at their field which was at a distance of about 1 km from her house. She was taken to the hospital at Vadodara for her treatment. In the history given to the doctor, she had not given names of the assailants. She agreed that she went to the place after receiving phone call from Vinod at which time, Narvatbhai, Rangeet and Madhuben were already injured and they were lying there. She agreed that next day, she was told about Rangeet having expired after which, the FIR was lodged. She was confronted with her disclosures in the FIR in which she had given a somewhat different version.

4. In the FIR Exh 13, this witness had stated that about a year back, a quarrel had taken place between Pradipbhai, accused No.1 and Rangeet about plucking kankoda (a kind of vegetable). On the previous evening i.e. on the date of the incident, at about 6 O'clock, she had gone to the field for feeding the buffaloes and for milking them. She was returning from there at about 8:30, at which time, while passing through the house of Narvatsinh, she heard shouts and had seen the four accused assaulting Rangeet. She tried to intervene, upon which, she was given one blow on her thigh with the iron rod.

5. PW 7, Madhuben Narvatsinh Solanki, Exh 46 was an injured eyewitness. She deposed that they (i.e. she and her husband) had adopted her sister-in-law's son Rangeet. The accused often used to quarrel with them. The incident happened when they had gone to sleep. The four accused came to their house.

Accused No.1 had an iron rod. Accused Nos. 2 and 3 had sticks. Accused No.4 had a vataniyu. They started beating up her husband. Pradipbhai, accused No.1, gave a blow with the rod. She tried to save him. Paradipbhai, therefore, hit her on the thigh. Harshadbhai, accused No. 3 gave a blow on hand. Dilipbhai, accused No.2 also beat up her husband Narvatsinh. Alpeshsing @ Arvind, accused No.4 had given blows to Rangeet with the vataniyu. All four were beating up Rangeet. They dragged him on the road and left him dead there. After this, she, her husband Narvatsinh, Rangeet and Shardaben had gone to Kalol Hospital with her brother-in-law where all four were treated. Rangeet was taken to Baroda where he died. In the cross-examination she agreed that Shardaben lived in the village whereas she herself lived on the field. On the date of the incident, her son was sleeping inside the house. She and her husband were sleeping outside the house. There were previous quarrels between the two sides. She was confronted with the police statement in which, apparently, she had not referred to being assaulted when she had tried to save her husband or the precise role attributed to each accused by her in the deposition.

6. PW 11, Narvatsinh Pratapsinh Solanki, was also an injured eyewitness. He also referred to Rangeet being adopted by him and his wife. According to him, on the night of the incident at about 8:30 pm, he and his wife were sleeping outside the house while Rangeet was sleeping inside, at which time, all the four accused came to his house shouting and abusing, carrying iron rod, sticks and vataniyu. He also referred to the different weapons carried by each accused. He referred to the previous quarrel for plucking vegetables and later quarrel about a tree. All the four people, according to the witness, came there, started using foul language and beating him up, threatened to kill him and other family members. Harshadbhai and Dilipbhai hit him with sticks broke his hand. Pradipbhai hit him with the iron rod. Alpeshsing @ Arvind gave him a blow on his left thigh with vataniyu. He had given kick blows. When he shouted for Rangeet, he came out, upon which, accused No.1 gave a blow on the head with the rod. Alpeshsing @ Arvind told the others to drag the boy out. Pradipbhai and Dilipbhai continued to beat him with the rod and stick. They dragged him to the road where also he was beaten. He could not come out immediately but came with great difficulty and called up in the village. When Balvant and Vinod came, accused No.3 gave a stick blow to Vinod also. Rangeet was left in the bushes. They had attacked his wife Madhuben. In the cross examination, he was confronted with his own criminal past, in which, he was an accused in several criminal cases. He was confronted with his police statement during which, he had not mentioned about Rangeet being dragged from the house till the road. He agreed Shardaben had arrived only after Rangeet was thrown in the bushes. He had also not given the description of each blow by the different accused on himself in the police statement.

7. Dr. Shakuntala Salamsinh Parmar, PW 6, Exh 39 had treated Shardaben at Kalol Community Health Center where she was posted as a Medical Officer. She had found reddish coloured scratch mark on the left thigh of 11 cm x 4.5 cm

which could be caused with an iron rod. She had also treated the four accused for minor bruises and abrasions who had been brought before her alongwith the police yadi.

8. Dr. Sherbanu Azamkhan Pathan, PW 9, Exh 49 was the Medical Officer at SSG Hospital, Vadodara. She had treated the injured Vinod Dalpatbhai Solanki as well as Narvatbhai. Narvatbhai had given the history of being assaulted by Dilipbhai and other persons. In the injury certificate Exh 51 she had recorded following injuries: "1. Lakadi & Are

2. Yesterday 9.00 pm by Dilip Koyabhai and other persons O.L patient is conscious

(1) Pain/tenderness /swelling Rt Shoulder

(2) Rt shoulder Pain/tenderness/swelling back of hand Rt..

(3) Swelling Rf Check

(4) Blunt injury both legs.

(5) Clw Rt parieto-temporal region 3 cmx1 cmx 4.5 cm

(6) Clw Lt. eyebrow"

She had found the fractures on both the ulna bones and fracture on left tibia bone.

9. Dr. Pankaj Gandabhai Prajapati, PW 8, Exh 47, had carried out the postmortem of the dead body of Rangeet. In the PM note Exh 48 he had recorded following injuries: "Column 17. (1) Lacerated wound of 5 cm x 0.5 cm with 5 finely stitches present transversally over left high parietal region, just left to midline and 7 cm above to external occipital protuberance with abrasion of size 0.5 cm surrounding to wound. Surrounding scalp hairs shaved; (2) Lacerated wound of size 6 cm x 0.5 cm with 4 block stitches present vertically over right frontal region, 5 cm above to outer end of right eyebrow and 4 cm right to midline with 1 cm abrasion surrounding to wound. Surround scalp has shaved. After removal of stitches of 1 and 2 injury, margins not adherent to each other, margins irregular and contused and reddish clotted present over margins; (3) Abrasion of size 1 cm x 0.5 cm present over left side of forehead, and 4 cm above to eyebrow and 3 cm left to midline; (4) Lacerated wound of size 2 cm x 0.5 cm into skin deep present just above right eyebrow; (5) Abrasion of size 4 cm x 2 cm present at outer corner from right eye; (6) Abrasion of size 0.5 cm x 0.4 cm present over outer part from left eye; (7) Abrasion of size 1 cm in diameter present over left malar prominence; (8) Abrasion of size 2 cm x 1 cm present over upper part of right ear; (9) Multiple abrasions of size varying from 2 cm x 0.2 cm to 10 cm x 5 cm present over whole right upper limb at back and outer aspect with underlying contusion over whole right upper limb; Column No. 18: Palpable fracture of right fibia bone in middle and fracture of lower end of ulna bone of right side. Both fracture closed. Column No. 18(8): Yes antemortem in

nature. Above all injuries are occurred within 24 hrs before death. (10) Multiple abrasions of size varying from 0.5 cm x 0.4 cm to 5 cm x 3 cm present over back and outer aspect of whole left upper limbs with underlying contusion over back of left elbow. (11) Abrasion of size 1 cm x 0.5 cm present over left mid chest in front, near nipple; (12) Abrasion of size 10 cm x 2 cm present over outer aspect of right chest 5 cm below to axillae vertically placed; (13) Abrasion of size 2 cm x 1 cm present over inner aspect of lower 1/3 of left leg. 10 cm above middle malleolus; (14) Abrasion of size 4 cm x 3 cm present over outer aspect of upper 1/3 of left leg. 5 cm below knee; (15) Abrasion of size 2 cm x 1 cm present over inner aspect of left middle thigh; (16) Rail-road contusion of size 7 cm x 3 cm with 1 cm normal intervening area at outer aspect of right mid thigh; (17) Multiple linear abrasion of size 1 cm x 0.1 cm to 10 cm x 0.3 cm in different directions, present over bones of chest; (18) Rail-road contusion of size 10 cm x 2 cm with 1 cm normal intervening area obliquely placed present over right flank region at back just above right posterior superior iliac spine; (19.) Abrasion of size 5 cm x 4 cm present over back of outer aspect of right middle abdomen, 8 cm right to midline; (20) Contusion of size 12 cm x 10 cm present over front of right leg. 7 cm below to knee; (21) Rail road contusion of size 10 cm x 5 cm with 1 cm normal intervening area, transversely placed over back of right side of chest in midpost; (22) Railroad contusion of size 7 cm x 4 cm with normal intervening area of size 1 cm, obliquely placed present over mid part of back of right chest; Note: all abrasions and contusion are reddish in coloured margins of lacerated wound irregular and contused. Following external injuries were deduced by him: Fracture of 4th and 5th rib of right side in front and fracture of 1st, 2nd, 3rd rib of left side in front-just outer to costochondral junction with surrounding inter costal muscle contused with extravasation of blood seen. Pleura intact no abnormal fluid collected. No injury over hyoid bone, thyroid cartilage and tracheal rings mucosa pale Both lungs pale intact Cut section shows frothy blood coming out. Weight of right lung 400 gm Weight of left lung 350 gm Intact No. abnormal fluid collected. Intact weight 270 gm Intact human patent. Fracture of right fibia bone with surrounding tissue contused with extravasation of blood seen about 500 ml. Fracture of right ulna bone and lower end with extravasation of blood seen with surrounding tissue contused." In his opinion, the death occurred due to "shock and hemorrhage due to multiple injuries over the body."

10. This, in the nutshell, is the evidence on record. On the basis of such evidence, learned advocates for the appellants submitted that there was insufficient evidence to connect any of the accused with the incident. The witnesses had given contradictory and inconsistent versions. There are number of improvements and contradictions in their statements as compared to their police statements. Alternatively, it was submitted that the death could not be attributed to any single injury and convicting all the accused for offence under section 302 with the aid of section 114 of IPC therefore, was not permissible. In particular, learned advocate Shri Pratik Barot for the accused nos. 3 and 4 relied on the following decisions: (i) In case of Vijay Singh and anr vs. State of Madhya

Pradesh reported in (2014) 12 Supreme Court Cases 293, in which, in facts of the case when it was found that the death was not due to a one single injury, as recorded by the High Court, but a culmination of several injuries caused by different accused and also looking to the nature of injury, the Supreme Court converted the conviction from that under section 302 read with section 34 to section 326 of IPC. (ii) In case of Sompal Singh and anr vs. State of U.P. reported in 2014 Cri. L.J. 3143 in which considering the nature of injury and the fact that the injured survived for nearly three days before he died, the conviction of the accused from that under section 302 was converted into one under section 304 Part I of IPC.

11. On the other hand, learned APP Ms. Hansa Punani opposed the appeal contending that the Trial Court has given cogent reasons. The evidence on record clearly established involvement of each accused. The conviction under section 302 with the aid of section 114/34 of IPC was justified.

12. At the very outset, we are prepared to discard the version of Shardaben as an eyewitness. There are multiple reasons for coming to such a conclusion. First and foremost, the version given by Shardaben in her FIR Exh 13 was substantially different from one given by her in her deposition before the Court. We may recall, in the FIR she had given account that she had gone to the field for feeding the buffaloes and milking them. At about 8:30 when she was returning home, she heard shouts from the house of Narvatsinh and rushed there to see the assault by the four accused on Rangeet. In her deposition, however, she changed her version to coming to the house of Narvatsinh on receiving a phone call. Thus, the version of her being on the spot when freshly the attack was still going on, as given in the FIR, was discarded by herself in the deposition before the Court. Secondly, the prosecution witnesses have admitted that Shardaben lived in the village whereas Narvatsinh lived in his house on the field and the two houses were separated by a distance of nearly one kilometer. If Shardaben therefore, reached the place of incident which was at the house of Narvatsinh after receiving a phone call; obviously she could not have witnessed much of the assault by the accused either on Narvatsinh or on Rangeet. In the deposition, she herself had admitted that when she reached there, the accused had already assaulted her brother-in-law i.e. Narvatsinh and were beating Rangeet. Additionally, Narvatsing, PW 11, had admitted that Shardaben had arrived after the incident was over and Rangeet was thrown in the bushes. Going by her injury on the thigh it is entirely possible that this witness Shardaben might have reached the place when the accused had still not left. However, it is not possible to believe that she had been the eyewitness to the entire incident when first Narvatsinh and then Rangeet were assaulted by the accused.

13. Despite this conclusion, we cannot lose sight of the fact that Madhuben, PW 7 and Narvatsinh, PW 11, have given their own accounts of the incident. Their presence at their own house at night hours was most natural. The versions of various witnesses that Rangeet was informally adopted by Narvatsinh and his

wife is not even challenged by the defence. The presence of Rangeet, Narvatbhai and Madhuben at night at their own house was thus, natural. Madhuben herself had received minor injuries. She was treated by Dr. Madhulika PW 10 at Community Health Center, Kalol. According to Madhulika as well as Narvatsinh, the couple was sleeping outside the house whereas Rangeet was sleeping inside the house. Madhuben had given account of the four accused coming to their house with different weapons and assaulting her husband. There may be minor omission in the police statement, a minor exaggeration in the deposition before the Court, however, insofar as the presence of the four accused, different weapons attributed to them and their roles in beating up Narvatsinh is concerned, there is no reason for us to discard the testimony of this witness. It may be that she may not have seen the entire assault on Rangeet since much of it took place on the road outside the house and she had admitted that she had not gone to the road during such assault. However, according to her as well as Narvatsinh even Rangeet received beating in the house before he was dragged out. Likewise, Narvatsinh himself was severely beaten. He had received as many as three fractures on his hands as well as on his leg. All the injuries were recorded by Dr. Sherbanu, PW 9. Narvatsinh's account in this context, therefore becomes crucial. He had given the history of past quarrels between the two sides about a year back. There was a quarrel about plucking vegetables. Sometime later, a quarrel had erupted due to the dispute regarding a tree. According to this witness, all the four accused had come to his house armed with iron rod, sticks and vataniyu and started using foul language and first beat him up. When Rangeet came out, they mercilessly assaulted him, dragged him to the road, continuously beating him. Here also there may be minor improvements in the deposition as compared to the police statement of this witness. There is nothing fundamental which would persuade us to completely discard his deposition.

14. The eyewitness accounts of these two injured eyewitnesses are duly corroborated by the medical opinion. As noted earlier, Dr. Sherbanu PW 9, had treated Narvatsinh and recorded the injuries in the injury certificate Exh 50. Dr. Pankaj, PW 8, who had carried out postmortem had recorded in the postmortem note Exh 48 as many as 22 injuries on the body of the Rangeet. All the injuries were consistent with the nature of weapons attributed to the accused viz. iron rod, sticks and vataniyu.

15. It may be that no singular injury could have caused death. As per the medical opinion, the death occurred due to cumulative effect of all the injuries. Nevertheless, we cannot lose sight of certain salient features which emerge from the record. Firstly, the assailants had seriously injured Narvatsinh before they focused their attention on Rangeet. Besides causing three fractures to Narvatsinh, the accused had caused as many as 22 different injuries to Rangeet, in the process, causing rib fractures and several other serious injuries. Conviction of all the accused for offence under section 302 with the aid of section 114 or at least Section 34 of IPC was certainly warranted. The four accused had come to the house of the deceased armed with different weapons at a time when

Madhuben, Narvatsinh and their son were most likely to be at home and mostly resting. Without any quarrel taking place on that very day, they had started beating up Narvatsinh and his son Rangeet. Preplanning and pre-meditation was thus writ large on the face of the record. They first beat up Narvatsinh and thereafter carried out the attack on Rangeet. After beating Rangeet in the house for a while they dragged him out and gave some more blows with the different weapons they were carrying. They probably left Rangeet thinking he was already dead. The fact that he survived for a day is wholly incidental. In view of such facts despite earnest attempt on part of Shri Pratik Barot to persuade us to convert the conviction of accused Nos.3 and 4 into one under section 304 of IPC, we are unable to accept the suggestion.

16. In view of the above discussion, Criminal Appeal qua appellant No.2 is disposed of as having abated. Qua the remaining appellants, the criminal appeal is dismissed. R & P may be transmitted to the concerned trial Court.