
(2010) 04 GUJ CK 0020
In the Gujarat High Court
Case No : Criminal Appeal No. 680 of 2005

Pratapsing Mahendrasing Sikh	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 05-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 304

Citation : (2010) 04 GUJ CK 0020

Hon'ble Judges : Bankim N. Mehta, J;A.L. Dave, J

Bench : Division Bench

Advocate : Nita C. Banker, for the Appellant; H.H. Parikh, APP, for the Respondent

Final Decision : Dismissed

Judgement

Bankim. N. Mehta, J.—The appellant convict has preferred this appeal and challenged the judgment and order of conviction and sentence rendered by learned Additional Sessions Judge, 9th Fast Track Court, Bharuch at Rajpipla on 31.3.2005 in Sessions Case No. 125 of 2004 convicting him for the offence u/s 302 of the IPC and sentencing him to life imprisonment and to pay fine of Rs. 250/-, in default thereof to undergo SI for one month.

2. It is the prosecution case that on 27.4.2004 at about 22:00 hrs., the accused made assault with stick on Jashwantsing Pritamsing and caused him injuries resulting into his death.

3. On the basis of the first information report lodged by Gurumukhsing Jitsing, offence was registered and investigation was started. During the course of investigation, Panchnamas were drawn, statements of witnesses were recorded and dead body was sent for postmortem. At the end of investigation, charge sheet came to be filed against the accused for the aforesaid offence. As the offence against the appellants was triable by the Sessions Court, the case was committed to the Sessions Court and it was registered as Sessions Case No. 125

of 2004. The learned Additional Sessions Judge framed charge Exh-5 for the aforesaid offence against the accused. The accused pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution adduced evidence. On completion of recording of evidence, the incriminating circumstances appearing in the evidence against the accused was explained to him. The accused in their further statement recorded u/s 313 of the Code of Criminal Procedure, 1973, stated that he is innocent and the complainant with a view to save his brother has filed false complaint. It is further stated that the witnesses are interested witnesses and hence, the complainant and his father did not get the job of protecting sim, and as the job was assigned to the persons related to him, false complaint is filed. After hearing the learned Additional Public Prosecutor and learned advocate for the appellant accused, the trial Court recorded that the prosecution has successfully proved the charge levelled against the accused beyond reasonable doubt and therefore, convicted him as mentioned hereinbefore. Being aggrieved by the said decision, the accused have preferred this appeal.

4. We have heard learned advocate Ms. Nita Banker, learned advocate for the appellant and learned APP Mr. Parikh at length and in great detail. We have also perused the impugned judgment and record and proceedings of the trial Court.

5. Learned advocate Ms. Banker has restricted her arguments with regard to sentence only. She has submitted that the manner in which the incident has occurred, the appellant could be convicted only for the offence u/s 304 of the IPC, as the incident occurred on account of grave and sudden provocation and therefore, the learned trial Judge committed error in convicting the accused for the offence of murder.

6. Learned APP has submitted that the evidence does not indicate that there was grave and sudden provocation. On the contrary, it indicates that the accused with pre-determined mind made assault and caused injuries on the vital parts of the deceased and therefore, the learned trial Judge was justified in convicting the accused for the offence of murder. Therefore, no interference is warranted in the impugned judgment.

7. It appears from the prosecution case that there was only one eye witness PW 9 Sangitaben to the incident. It appears from her evidence that on the day of incident, the accused, her husband Gurumukhsing and two others were at their house at about 6:00 p.m. and at that time, deceased Jashwantsing came to their house as guest. It also indicates that thereafter at about 9:00 at night, her husband Gurumukhsing and Dharamsing went to guard the sim and the accused also left separately to guard the sim. Thereafter, at about 10:00 at night, the accused returned and made assault on Jashwantsing who was sitting on the cot saying that why he had come there. The evidence of this witness also indicates that the accused made assault on head, chest and right arm of the deceased. The witness has been extensively cross-examined by the accused. From the tenure of the cross-examination, it appears that the accused has not only denied

his involvement in the incident but has put up a defence that Jashwantsing was left in the cot after beating by the strangers. In view of this evidence, it clearly emerges that the deceased sustained injuries at the house and the witness was present at the time of incident. There is no whisper about grave and sudden provocation by the deceased at the time of incident. Even no suggestion in this regard has been put in the cross-examination of the witness. It also appears that before the incident, the accused, the deceased and others were at the house and after the accused and others left the house for their job leaving the deceased at house, the accused returned home after some time and made assault. Therefore, it clearly emerges that the accused returned home with pre-determined mind to make assault on the deceased. In view of this evidence, it is difficult to accept that there was grave and sudden provocation by the deceased and on account of this, the accused made assault on the deceased. Therefore, this submission cannot be accepted.

8. The serological report Exh-39 and 41 also indicate that the blood stains belonging to the blood group of the deceased were found on the cloth of the accused and no satisfactory explanation in that regard has been offered by the accused. Therefore, the prosecution has proved beyond reasonable doubt that the accused was involved in the incident. In view of the fact that the learned advocate for the appellant has not challenged his involvement in the incident, this evidence does not require any further elaboration.

9. The medical evidence in the form of PW 7 Dr. Ajitbhai Chandubhai Exh-25 and postmortem report Exh-27 also indicate that the death was homicidal in nature.

10. In view of above, the learned trial Judge was justified in recording conviction of the accused for the offence of murder and therefore, no interference is warranted in the impugned judgment.

11. In the result, the appeal stands dismissed. The judgment and order of conviction and sentence rendered by learned Additional Sessions Judge, 9th Fast Track Court, Bharuch at Rajpipla on 31.3.2005 in Sessions Case No. 125 of 2004, is hereby confirmed.