

(2009) 05 GUJ CK 0046

In the Gujarat High Court

Case No : Criminal Appeal No's. 38 and 683 of 2003

Ramanbhai Bhurabhai Nayak

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 07-05-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374(2)

Penal Code, 1860 (IPC) — Section 114, 302, 427, 504, 506(2)

Citation : (2009) 2 DMC 845

Hon'ble Judges : Bhagwati Prasad, J; Bankim N. Mehta, J

Bench : Division Bench

Advocate : PM Dave, for the Appellant; DA Desai, APP, for the Respondent

Judgement

Bhagwati Prasad, J.—The appellant - convict has preferred this appeal u/s 374(2) of the Code of Criminal Procedure, 1973 and challenged the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Fast Track Court, Panchmahal at Godhra on 30.10.2002 in Sessions Case No. 204 of 2002 convicting him for the offence punishable under Sections 302 and 506(2) of the Indian Penal Code and sentencing him to undergo life imprisonment and to pay fine of Rs. 5000/- in default thereof to undergo SI for 6 months for the offence punishable u/s 302 of the IPC, and to undergo RI for 6 months and to pay fine of Rs. 100/-, in default thereof to undergo SI for 15 days for the offence punishable u/s 506(2) of the IPC.

2. According to the prosecution case, on 16.4.2002 at about 18:00 hrs., when complainant Jasiben Somabhai came near the house of accused Rameshbhai Bhurabhai after fetching water, he stopped and told her that he would not spare her and also gave abuses. Jasiben returned home and accused Ramanbhai followed her with stick, broke the tiles and pelted stones on her buffalo. As Jasiben tried to save the buffalo, accused Ramanbhai caught hold of Jasiben and asked accused No. 2 Rukhiben Bhurabhai to bring kerosene, who brought kerosene and accused Ramanbhai poured kerosene on Jasiben and set her on fire

by igniting matchstick. Jasiben succumbed to the injuries during the treatment.

3. On the basis of the first information report lodged by deceased Jasiben, an offence was registered and investigation was started. At the end of investigation, charge sheet came to be filed for the aforesaid offences. As the offence was triable by Sessions Court, the case was committed to the Sessions Court and it was registered as Sessions Case No. 204 of 2002. The learned Joint District Judge, Fast Track Court framed charge Exh-2 for the offence under Sections 302, 504, 506(2), 427 and 114 of the IPC. The accused pleaded not guilty 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 were explained to them. The accused in their further statement recorded u/s 313 of the Code of Criminal Procedure, 1973, stated that false case is filed against them. After hearing the learned Additional Public Prosecutor and learned advocate for the accused, the learned trial Court convicted accused Ramanbhai but acquitted his mother Rukhiben Bhurabhai. Being aggrieved by the said decision, accused Ramanbhai has preferred appeal. State has also preferred appeal against acquittal of co-accused Rukhiben.

4. As both these appeals arise out of the same judgment, both have been heard together and decided by this judgment.

5. We have heard learned advocate Mr. PM Dave for the appellant and the acquitted respondent and learned APP Mr. DA Desai for the State at length and in great detail. We have also perused the impugned judgment and record and proceedings of the trial Court.

6. Learned advocate Mr. Dave has submitted that there is no evidence to indicate that the accused were responsible for death of Jasiben, as the dying declaration appears to be tutored one and the declarant was not in a fit state of mind or conscious to give the dying declaration. He has also submitted that there was some quarrel between the deceased and her husband and therefore, the deceased committed suicide by setting herself on fire. He has also submitted that there is no evidence to indicate that accused Rukhiben had participated in the offence. Therefore, the learned trial Judge committed error in convicting the accused, but was justified in acquitting Rukhiben. Hence, the impugned judgment of conviction is required to be allowed and acquittal appeal is required to be dismissed.

7. Learned APP Mr. Desai has submitted that the dying declaration and the complaint lodged by the deceased clearly indicate that the accused was responsible for burn injuries and there is nothing to indicate that the dying declaration was tutored or that the declarant was not conscious at the time of giving her statement. Therefore, the learned trial Judge was justified in relying upon the evidence. He has also submitted that the evidence also indicate involvement of Rukhiben as she brought kerosene and therefore, the learned trial Judge committed error in acquitting her and hence, the appeal filed by the

convict is required to be dismissed and State Appeal is required to be allowed.

8. According to the submission of learned advocate Mr. Dave, the deceased committed suicide, as she had quarrel with her husband. This submission is made for the first time in the appeal. The accused has not raised this defence in the trial court. Even, in the further statement of the accused, this explanation with regard to burns has not been given. Therefore, it appears that this submission is an afterthought and has no substance in it.

9. The evidence of PW 3 Dipakkumar Exh-10, the Executive Magistrate who recorded the dying declaration, indicates that on receiving Yadi Exh-11 to record the dying declaration, he went to the doctor, who informed him that the patient was conscious, therefore, his endorsement on Yadi Exh-11 was obtained and the dying declaration of Jasiben was recorded. The evidence of this witness also indicates that the declarant stated before him that there was quarrel prior to the incident and accused Ramanbhai and his mother Rukhiben came with kerosene container and matchstick and set her on fire. The witness has been extensively cross-examined. According to the witness, the declarant was in the state of giving replies. The Yadi Exh-11 bears the endorsement made by the doctor that patient was conscious. There is nothing to indicate that the declarant was not conscious at the time of recording her statement. Even the Executive Magistrate also ascertained from the doctor that the patient was conscious and was in a state to give replies. The dying declaration is in question-answer form. The evidence also indicates that the relatives of the declarant were not present at the time of recording of the dying declaration. Therefore, it appears that Jasiben was conscious and in fit state of mind to give her statement and she was not tutored.

10. The dying declaration Exh-12 indicates that the accused and his mother Rukhiben set Jasiben on fire and at that time, except her daughter, none was present in the house.

11. In view of above, it emerges that accused Ramanbhai was responsible for burn injuries to Jasiben. As observed earlier, there is nothing to indicate that the declarant was not conscious or not in fit state of mind or was tutored before recording her statement. Therefore, the learned trial Judge was justified in relying upon the dying declaration.

12. The first information report Exh-20 lodged by deceased Jasiben alleges that Rukhiben brought the kerosene container and gave it to accused Ramanbhai, who poured kerosene on her, took out matchstick from his shirt pocket and set her on fire. This evidence supports the prosecution version that accused Ramanbhai was responsible for burn injuries to Jasiben.

13. The evidence of the daughter of Jasiben and the only eyewitness PW 4 Shardaben Exh-13 indicates that accused Ramanbhai poured kerosene, ignited matchstick and set Jasiben on fire.

14. The evidence of PW 10 Dr. Shetal Modi Exh-36, the doctor who performed

the postmortem of Jasiben, indicates that the deceased had sustained burn injuries. The certificate Exh-24 given by the doctor indicates that Jasiben died on account of septicemic shock due to extensive burns. The postmortem report Exh-17 also indicates the injuries and cause of death. There is nothing to indicate that the burn injuries were suicidal. Therefore, death of Jasiben was homicidal.

15. In view of above consistent evidence, it clearly emerges that accused Ramanbhai poured kerosene on Jasiben, ignited matchstick and set her on fire.

16. As regards involvement of Rukhiben, it appears from the dying declaration and the complaint that there is discrepancy with regard to role attributed to her. Even, there is discrepancy in the evidence of eyewitness PW 4 with regard to participation by Rukhiben. Therefore, the learned trial Judge was justified in not relying upon the evidence and acquitting her.

17. In view of above, the appeal of accused Ramanbhai against the conviction fails and is accordingly dismissed. The judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Fast Track Court, Panchmahal at Godhra on 30.10.2002 in Sessions Case No. 204 of 2002, is hereby confirmed. But, the acquittal appeal being Criminal Appeal No. 683 of 2003 filed by the State is hereby dismissed.