
(2015) 10 GUJ CK 0108
In the Gujarat High Court
Case No : Criminal Appeal No. 453 of 2011

Ramanbhai Chimanbhai Vasava

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 12-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311, 313, 374, 374(2), 386

Evidence Act, 1872 — Section 154

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

Citation : (2015) 10 GUJ CK 0108

Hon'ble Judges : Anant S. Dave, J; Z.K. Saiyed, J

Bench : Division Bench

Advocate : Mrudul M. Barot, for the Appellant; Jirga Jhaveri, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Anant S. Dave, J—This appeal under Section 374(2) of the Code of Criminal Procedure, 1973 is filed by the appellant/original accused against the judgement and order of conviction dated 29.10.2010 passed by learned Sessions Judge Fast Track Court, Bharuch Camp at Ankleshwar in Sessions Case No. 64 of 2010 convicting the accused appellant under Section 302 of Indian Penal Code whereby he is sentenced imprisonment for life and fine of Rs. 5,000/- in default to undergo S.I. For 3 months.

2. The case of the prosecution in brief is that the complainant is the daughter of the appellant and deceased Ramilaben is the mother and on 5.2.2010, the complaint was lodged before the police. The complainant with her husband and two sons are residing at Bhimpur and her mother also started to reside with her as she had a dispute with her father. A day before the incident i.e. on 3.2.2010, the appellant had gone to bring back his wife, now deceased, at her house and thereafter the appellant and deceased stayed together at their daughter's house. On 5.2.2010, when the husband of the complainant had gone for a job in a

factory at Rajpardi, the appellant father and mother (deceased) went to the forest with an axe under the guise of cutting woods around 1300 hours and after half an hour, the appellant returned to the house of the complainant daughter with axe having blood stains and uttered "I have killed your mother by giving a blow of axe on head" and the above axe with blood stains was snatched away by the complainant from the appellant father and it was hidden in the house. After some time mother of the complainant reached at her house in a bleeding condition and said to her that appellant had given blow of axe and immediately mother of the complainant fell down. The complainant had called her husband who was on the job at factory who reached around 15:30 hours on bicycle and thereafter called the ambulance 108 and complainant, her husband and neighbour took the mother of the complainant at Umla Government Hospital and was shifted later on to hospital at Bharuch where she died and accordingly, a case was registered with Zagadiya Police Station for the offence punishable under Section 302 of Indian Penal Code and on completion of investigation and following the procedure for committal, it was committed to learned Additional Sessions Judge Fast Track Court, Bharuch and registered as Sessions Case No. 64 of 2010.

3. The case of the prosecution was considered in light of oral as well as documentary evidence and unfortunate part of the trial is that the complainant namely, daughter of the appellant turned hostile and other witnesses namely, relatives and neighbours which included son-in-law and one Kamlaben, elder sister-in-law of the complainant. Learned Trial Judge considered the case of the prosecution which was based now on circumstantial evidence and found that the prosecution had established all the circumstances and other circumstances were proved beyond reasonable doubt, forming the chain of circumstances in which no link was missing and such chain of events led to only inescapable conclusion of guilt of the accused and incoherent with innocence of the accused. Thus, offence was found to have been committed by the accused only and while concluding about guilt of the accused, the learned trial Judge has relied on certain documents admitted by the defence and for accepting the same, no objection was lodged. That Exh. 6 reveal such an endorsement of learned advocate for the defence and even testimonies of witnesses who turned hostile to the extent of supporting case of the prosecution along with trustworthy testimonies of police witnesses, nature of injuries, seizure panchnama of clothes of deceased as well as accused containing blood stains, inquest panchnama which shows presence of the complainant and her statement about lodging complaint before the police station and muddamal articles sent for FSL which contained blood on axe and clothes of deceased as well as the accused and of the place of offence all such circumstances were cogent and convincing enough to convict and sentence the appellant-accused for life.

4. Mr. Mridul Barot, learned advocate, for the appellant/convict would contend that complainant in this case has turned hostile along with her husband, Kamlaben elder sister-in-law and other neighbours and therefore, relying on

other evidence by learned trial Judge has resulted into miscarriage of justice and order of conviction and sentence deserves to be quashed and set aside. It is submitted that there is denial in toto by above witnesses who have not supported the case of the prosecution and simply because injuries were found on body of the person, carrying out postmortem, sending muddamal articles for FSL and report received thereon along with serological report are not sufficient to lead to the guilt of appellant. It is further submitted that even police witnesses have also tried to improve upon their version from what they have stated earlier and inflicting of blows of axe by the appellant on his wife was admittedly not seen by any one and vital link in forming chain of events of circumstances is missing it cannot be said that circumstances are established by the prosecution forming nexus with each other leading to the guilt of the accused. In a case of circumstantial evidence, unless the Court appreciating such evidence comes to conclusion not only about guilt of the accused but also it is against his innocence. In this case, the complainant has though admitted to have lodged complaint but contents therein are denied fully. That axe allegedly used for commission of crime was produced by the complainant which also creates doubt about case of the prosecution. Alternatively, it is submitted that the appellant has given blow of axe but he had no intention to kill his wife, otherwise opportunity was available to the appellant to inflict more blows and therefore, it cannot be said that the appellant has acted in a cruel or unusual manner. Therefore, the appellant is entitled for exception 4 of Section 300 of Indian Penal Code as the culpable homicide would not amount murder and case of the prosecution at the most fall under Part-I of Section 304 of Indian Penal Code and conviction and sentence can be altered. It is submitted that the appellant hails from tribal area and unaware about consequences of the crime, for which, he had no intention. The appeal deserves to be allowed accordingly.

5. Learned APP appearing for the State would contend that learned trial Judge has considered evidence oral as well as documentary in the context of case of the prosecution and manner in which it is appreciated and reasonings are assigned in support of findings and conclusion drawn about guilt of the accused, it cannot be said that learned trial Judge has either erred in law or on facts warranting any interference of this Court. Learned APP has taken us to the testimonies of police witnesses who stood by their action during the course of investigation including statement made by the complainant, her husband, neighbours, medical officer and Doctor who carried out postmortem report, recovery panchnamas, FSL and serological report confirming nature of injuries and blood stains on clothes of the deceased and accused and on the weapon axe of having "A" group and therefore, it is submitted that such an exercise undertaken by learned Judge whereby all circumstances were established and proved by prosecution, warrant no interference by this Court in exercise of powers under Section 374 read with Section 386 of the Code of Criminal Procedure, 1973 and appeal deserves to be rejected.

6. We have considered the arguments and perused the record of the case and

carefully gone through the testimonies of prosecution witnesses and documentary evidence which are as under:

Oral Evidence:

Documentary Evidence:

7. No doubt, complainant, her husband, elder sister-in-law, neighbours have not supported case of the prosecution but a careful perusal of admitted documentary evidence at Exh. 6 page 80 of paper book reveal that inquest panchnama Exh. 16, arrest panchnama of the accused-appellant Exh. 17, seizure panchnama of clothes of deceased Exh. 18, receipt of FSL Exh. 36, Report of FSL Exh. 37, wardhi receipt from the Civil Hospital Exh. 38 and report of FSL Exh. 39 all the above documents were exhibited, for which, no objection was raised by defence and with their consent the learned Judge passed an order. All the above documents if perused reveal that place of offence was shown by the complainant and even axe which was used in the commission of crime was also shown by the complainant. Even in inquest panchnama also complainant disclosed before panch about cause of the crime and the manner in which it was done by her father and even panchas support case of the prosecution to the extent of having signed of panchnamas.

8. Postmortem note Exh. 33 reveal following injuries in Column 17 i.e. External and Column 19 i.e. Internal:

"17. Incise wound 8 cms. x 5 cms. 7 cms deep (deep to brain) situated vertically on left parietal region bone is completely cut due to injury, brain is also cut due to injury."

"19. Incise wound 8 cms x 5 cms., 7 cms deep (deep to brain situated vertically on left parietal region. Left parietal bone completely cut due to injury brain is also cut due to injury. (2) Incised wound 10 cms x 3 cms. X 5 cms deep to brain situated vertically on left occipital region. Left occipital bone and brain cut deep to injury."

Cause of death in Column 23 that death of victim was due to Cardio Respiratory Arrest due to Hemorrhage shock due to craniocerebral injury. In testimonies of Dr. Vijay Kumar Parmar P.W.12 who performed the postmortem report opines such injuries by usage of sharp edge of the axe and is not enough in ordinary course of nature to cause death by a person. Rameshbhai Bhulabhai P.W.13 confirms about entries at page 1 in his station diary pertaining to complaint and Ramesh Chauhan P.W.14, Police Inspector, who carried out procedure of registering complaint, visiting civil hospital, Bharuch where the dead body of deceased was lying and recording statement of witnesses and following procedure of sending muddamal articles to FSL etc. categorically confirm to have recorded statement of the complainant, Jatniben Amarsingh, Mansukhbhai Puniyabhai Vasava, Kamlaben Dharmeshbhai, Gambirbhai Puniyabhai who happened to be relatives and neighbours of the complainant. Complainant, P.W.1

who was recalled by the trial Court under Section 311 of the Code of Criminal Procedure, 1973 admitted to have lodged complaint against her father but denied contents therein. Thus, not supporting the case of the prosecution by the complainant and other witnesses, but P.W.12, P.W.13 and P.W.14 make out a case in their testimonies about the guilt of the accused. Their testimonies are duly corroborated by the documentary evidence of inquest panchnama, scene of offence panchnama, seizure panchnama of clothes of deceased and accused and recovery panchnama of usage of article of commission of crime etc. and blood marks contained on such article as reflected on the report of the FSL and serological, leave no room of doubt about guilt of the accused. Even in a statement recorded under Section 313 of Code of Criminal Procedure, 1973, no explanation is given by the accused to incriminating circumstances, revealed from the panchnama including that of blood stained clothes and circumstances as reproduced in paras 14 and 15 and in para 7 of the judgment by learned trial Judge stood proved and as laid down by the Apex Court in the case of Karamjit Singh Vs. State (Delhi Administration), AIR 2003 SC 1311 : (2003) CriLJ 2021 : (2003) 3 JT 249 : (2003) 3 SCALE 398 : (2003) 5 SCC 291 : (2003) 3 SCR 25 : (2003) 2 UJ 799 : (2003) AIRSCW 1716 : (2003) 3 Supreme 397 , the testimonies of the police witnesses are to be appreciated in the same manner like that of any other witness. That witness(es) who do not support case of the prosecution and such testimonies to the extent of supporting version of the crime etc. can be considered in light of Section 154 of Evidence Act. In the case of Prithi Vs. State of Haryana, (2010) 7 JT 567 : (2011) 1 RCR(Criminal) 262 : (2010) 7 SCALE 344 : (2010) 8 SCC 536 : (2010) 9 SCR 33 it has reiterated the legal position that "the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on careful scrutiny thereof." The decision relied of by Mr. Barot, learned advocate for the appellant, in the case of Buddhu Singh Vs. State of Bihar (Now Jharkhand), (2011) 6 JT 617 : (2011) 2 RCR(Criminal) 895 about hard blow inflicted with axe on vital part of the body though not intended to and it was not repeated was considered to be a case converting the case under Section 304 Part-II, is not applicable in this case inasmuch as in the facts of this case the appellant herein had given two blows of axe, for which, he had taken his wife away from the residence under the pretext of cutting woods and applied with such a force on vital part namely, on the head that while she was taken to the hospital reaching there was declared dead. Under the circumstances, no case is made out to convert or modify conviction and sentence so ordered by the learned trial Judge.

9. In absence of merit, this appeal filed under Section 374(2) of Code of Criminal Procedure, 1973 against conviction, is dismissed. The judgement and order dated 29.10.2010 passed by learned Additional Sessions Judge, Fast Track Court, Bharuch in Sessions Case No. 64 of 2010 stands confirmed.

10. Bail bond, if any, shall stand cancelled.

11. R & P to be sent back to the trial Court forthwith.