

(2024) 06 GUJ CK 0083

In the Gujarat High Court

Case No : Criminal Appeal (Against Conviction) No. 2352 of 2022, Criminal Appeal No. 195, 333 of 2023

Ramdevbhai @ Ramu Rajubhai Chavda

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 14-06-2024

Acts Referred:

Indian Penal Code, 1860 — Section 107, 108, 114, 300, 302, 304, 324
Gujarat Police Act, 1951 — Section 135
Code of Criminal Procedure, 1973 — Section 313, 374

Citation : (2024) 06 GUJ CK 0083

Hon'ble Judges : A.S. Supehia, J;Vimal K. Vyas, J

Bench : Division Bench

Advocate : Mrudul M Barot, Yogendra Thakore, Jagdish Satapara, Ronak Raval

Final Decision : Dismissed

Judgement

A.S. Supehia, J

1. Vide order dated 02.05.2024 passed in captioned appeal being Criminal Appeal No.2352 of 2022, the appeal was listed for final hearing along with Criminal Appeal Nos.333 of 2023 and 195 of 2023. We had given ample opportunities to learned advocate Mr.Satapara, who appears for Suresh @ Lalo Chhaganbhai Panara - original accused No.1, to appear and assist the Court however, since he did not appear, we decided to hear the appeals and asked learned advocate Mr.Thakore to assist the Court for the accused No.1 as well. Accordingly, as recorded in the order dated 06.05.2024, that despite learned advocate Mr.Satapara having been informed about the order dated 03.05.2024, he has again chosen not to appear on 06.05.2024. After hearing learned advocates Mr.Mrudul Barot and Mr.Thakore, we kept the matters reserved for judgement.

2. The present appeals filed under Section 374 of the Code of Criminal Procedure, 1973 (for short "the Cr.P.C.") emanate from the judgement and order

dated 13.04.2022 passed by Sessions Judge, Morbi in Sessions Case No.42 of 2017 convicting the appellants-original accused for the offence punishable under Sections 302, 324 and 114 of the Indian Penal Code, 1860 (the IPC) and under Section 135 of the Gujarat Police Act sentencing them to undergo rigorous imprisonment for life and fine of Rs.10,000/- and in default of payment of fine, to suffer simple imprisonment for 03 (three) months.

3. The appellants-accused were arrested in connection with the offence registered vide F.I.R. being C.R.No.I-30 of 2017 at Morbi City "B" Division Police Station, Morbi for the offence punishable under Sections 302, 324 and 114 of the IPC for the incident, which had taken place on 21.05.2017. On the basis of the said F.I.R., the investigation was carried out and the statements of the witnesses were recorded and necessary panchnama was made and charge-sheet was filed. Learned Additional Sessions Judge, Amreli framed the charge and the appellants pleaded not guilty.

FACTS

4. It is the case of the prosecution that the accused persons frequently demanded money for their expenses from the deceased - Kanji @ Kana Vasudevbbhai Raval and when he denied to give money to the accused, accused No.1 - Sureshbhai @ Lalo Chhaganbbhai Panara and accused No.2 - Ramdevbbhai @ Ramu Rajubhai Chavda inflicted knife blows on the chest and stomach of the deceased and caused fatal injuries to him, which resulted in his death. The accused also caused injuries on the right hand of the complainant and accused No.3 - Mayursinh @ Lalo Manubha Jadeja, caught hold of the deceased and thus, abetted accused Nos.1 and 2 in commission of the offence and after this assault, accused No.4 - Salman Dadubhai Davaliya took accused Nos.1 to 3 in his rickshaw and abetted them in running away from there.

SUBMISSIONS

5. Learned advocate Mr.Mrudul Barot appearing for the appellant-original accused No.2 has submitted that the prosecution has examined total

26 witnesses and produced documentary evidence to prove the case but considering both, oral as well as the documentary evidence, the prosecution has failed to prove the charges levelled against the accused. He has submitted that the prosecution has examined the complainant - Kalpeshbbhai Kantilal Makwana at Exh.21 and also examined the other persons as eye-witnesses but on a perusal of the oral evidence, the prosecution has failed to establish the fact that they were actually present at the place of incident and they have actually seen the incident. It is submitted that major omissions and contradictions emerge from the oral evidence of the complainant and the eye-witnesses and there is no co-relation between the facts stated by them in their evidence. It is further submitted that if we consider the facts of the complaint at Exh.22, as well as the facts emerged from the oral evidence of the complainant, it is not proved that the complainant himself has given the said complaint.

6. Learned advocate Mr.Barot has further referred to the evidence of PW-23 - Dr.Ravindrakumar Murlisinh at Exh.78 and submitted that he has conducted the post mortem of the deceased and has also medically treated the injured witness i.e. complainant but on a perusal of his evidence, it appears that the prosecution has suppressed some material facts on record. It is submitted that as per the case of the prosecution, the incident took place at 11:45 hrs., but from the evidence of the doctor, it appears that the condition of the dead body at the time of post mortem was such that it does not match with the time of the incident and the said fact also gets corroborated by the medical jurisprudence and the same is admitted by the doctor in his evidence. It is further submitted that from the evidence of the doctor, it is also not proved the manner, in which the accused have allegedly inflicted knife blows on the deceased as there are major contradictions between the facts stated by the doctor in his evidence and the facts narrated in the complaint. He has submitted that the prosecution has also failed to prove the link between the muddamal weapon and the injuries to the deceased. He has further submitted that from all the oral as well as documentary evidence, which have been adduced by the prosecution, it is not proved beyond reasonable doubt that right from the beginning, the accused No.4 has abetted the commission of offence.

7. Learned advocate Mr.Yogendra Thakore, appearing for the appellant-accused No.3-Mayursinh @ Lalo Manubha Jadeja and for accused No.2-Ramdevbhai @ Ramu Rajubhai Chavda, has submitted that the trial Court has erroneously convicted the accused for the offence, by taking aid of Section 114 of the IPC. He has submitted that so far as the role attributed to the accused No.3 is concerned, the same cannot be said to be serious in nature since it is alleged that he had caught hold of the deceased, whereas other accused have inflicted blows. He has submitted that he has not acted in an unusual and cruel manner. He has adopted the arguments advanced by learned advocate Mr.Barot.

8. Learned advocate Mr.Barot and learned advocate Mr.Thakore appearing for the original accused, have placed reliance on the judgement of the Apex Court in the case of Mariappan Vs. State Rep. By Inspector of Police, 2024 (2) S.C.C. 598 and have submitted that it is an overt act of holding the deceased in a rage. Hence, it is urged that the conviction recorded by the trial Court may be converted from Section 302 of the IPC to that of Section 304 Part-I or Part-II of the IPC.

9. Learned APP, while opposing the present appeals, has submitted that after completion of evidence, the prosecution has filed pursis vide Exh.103 declaring closing of evidence and thereafter, further statements of the accused were recorded, as per the provisions of Section 313 of the Cr.P.C., in which they have denied the allegations made against them. He has submitted that the prosecution has examined the complainant, who is also the eye-witness of the incident and he has also received injuries in this incident. He has submitted that this eye-witness has reiterated all the details in his examination-in-chief, as stated by him in the complainant. He has submitted that the complainant has

specifically stated that when he was standing with his friend - Kano near his home, at that time, Lalo Darbar (accused No.3) and Ramu Rajubhai Chavda (accused No.2) came from opposite street and at that time, Lalo - accused No.3 caught hold Kana (deceased) and Ramu (accused No.2) inflicted knife blow below ear of Kana (deceased) and after some time, Lalo Chhagan Koli (accused No.1) came from nearby street and he was also armed with knife and he inflicted one knife blow on the chest area of Kano. It is further submitted that when the complainant intervened, Lalo inflicted one knife blow on his right hand. It is submitted that the complainant has been cross-examined but not a single fact stated by this witness has been rebutted and, therefore, there is nothing to disbelieve the facts stated by the complainant in his oral evidence. He has placed reliance on the judgement of the Apex Court in the case of Chandan vs. The State (Delhi Admn.) dated 05.04.2024 passed in Criminal Appeal No.788 of 2012 and in the case of Yogesh Singh vs Mahabeer Singh & Ors., (2017) 11 S.C.C. 195.

10. We have heard the learned advocates for the respective parties and also perused the documents as pointed out by them.

CONCLUSION

11. PW-1, Complainant - Kalpeshbhai Kantilal Makwana at Exh.21, is also an eye-witness. He is a laborer in ceramics. He refers the incident, which has taken place on 21.05.2017 around 12:00 O'clock. It is deposed by him that at the time of the incident, he and his friend - Kano were standing in Mandir Chowk near his house. At that time Lalo Darbar (accused no.3) and Ramu Rajubhai Chavda (accused no.2) came from the street opposite to Mandir Chowk. Ramu had an open knife in his hand, and Lala caught hold of the deceased and Lalo gave a blow of knife on the boot of the deceased. A few moments thereafter, Lalo Chhagan (accused no.1) came from the side street with an open knife in his hand as well Lalo stabbed Kana in the chest, and when he tried to free him, Lalo also stabbed him in the middle of his palm of right hand. It is also deposed by him that in this incident, these three people ran away and Sukhdevbhai, came and took us to the hospital in a rickshaw. They were taken to Morbi Civil Hospital, where they were treated and after few minutes, the doctor declared Kanabhai as dead.

12. The reason given by this witness for the incident is that the accused were repeatedly demanding money from him and since he refused to give money, he was brutally assaulted. He has stated that he was discharged from the hospital in the evening, and on an inquiry made by the doctor, he had narrated the incident. The police also came and inquired from him. He has recognized the accused in the open court. This witness has been cross-examined extensively. He has established himself as a sterling witness. His testimony is not tainted with any major contradiction or omissions.

13. PW-2, Sukhdevbhai Dharamshibhai at Exh.32 is the eye-witness of the incident. This witness is the rickshaw driver, who had taken the deceased to the

hospital. He has referred to the occurrence of the incident as on 21.05.2017 at about 12:30 p.m. He was present near his house and on hearing the noises, near the Khodiyar Mata temple, he saw that (PW-3) Chandniben Amarshibhai Lalukiya was shouting, and as soon as he saw it, he took his rickshaw and went there. He saw that the accused No.1 - Suresh and accused No.2 - Ramu both had a knife in their hands, accused No.3 - Mayursinh had caught the deceased - Kana and he was stabbed by accused Nos.1 and 2. It is deposed that the deceased received one wound on the left side of the chest and another on the side, one wound on the right side of the back and also near the ear and these people ran away, after stabbing. It is stated that these people left in Salman's (accused No.4) rickshaw and he had placed Kalpesh and Kana in the rickshaw and took them to the hospital. The doctor came to the hospital, where the deceased was declared dead. He has also mentioned the injuries suffered by Kalpesh (PW-1) in the right hand. He has stated that Kalpeshbhai was stabbed near Khodiyar Mata temple in Ramakrishna Society. He was stabbed while trying to save the deceased - Kana.

14. This witness has also deposed that at the hospital, when he inquired from Kalpesh about the quarrel, he had stated that the quarrel was about money. The accused used to demand money from the deceased and, hence they stabbed him. This witness has examined the accused in the trial Court. In the cross-examination, the defence has remained unsuccessful in extracting any major contradiction. He has established himself as a witness of sterling quality.

15. PW-3, Chandniben Amarshibhai Lalukiya, at Exh.43. She has mentioned that date of occurrence as 21.05.2017. She has stated that she was standing near the door of her house at the time of the incident. Her sister-in-law was in the house and she was cooking. At that time both Kano (deceased) and Kalpesh (complainant) were standing there, where some commotion was going-on, and she has asserted presence of accused Nos.1, 2 and 3. She has deposed that during the quarrel, accused Nos.1 and 2 stabbed Kana (deceased), while the accused No.3 had caught him. They ran away when we came there. No major contradiction or omission is emerging from her evidence. She has also identified the accused in the Court. She has established herself as a reliable witness.

16. There is another eye-witness, PW-7, Jigenshbhai Gagajibhai Chauhan, who is examined at Exh.49. He has deposed that on 21.05.2017 at around 11.30 to 11.45, he has witnessed the incident from his gallery at the first floor from his house. He has specifically narrated the role of the accused, as narrated by the aforesaid witnesses. The defense has failed to dislodge his version. He has identified the accused before the trial Court. He has also established himself as a reliable witness.

17. We may refer to the medical evidence of post mortem report at Exh.79. The aforesaid PM report is proved by PW-23, Dr. Ravindrakumar Murlisinh, who is examined at Exh.78. He has referred to the injuries, which are suffered by the deceased. The following injuries are noticed by us:

"(i) A penetrating stab wound; vertical (slight oblique), located on left side of chest; 3 cm straight medial to left

Nipple; 11 cm Lower from left collar bone; length was 4 cm; maximum width at the centre of the wound was 2 cm; clean cut margin; wedge shallow; lower end sharp; upper end blunt * Direction of track from front to backward; Track passed through cutting intercostal canlage/collage/canlare, 5th intercostal space, pericardial sac; thin cutting through the heavy wall goes into heart chambers c stab wound length 5 mm*width 2cm seem over anterior surface of heart that hoes heavy chamber deep c clean cut C external-internal hemorrhage inside chest-cavity. The entire wound was infiltrated with blood. The injury was sharp cutting and through the heart chamber; likely to cause death because heart is vital organ; due to extensive hemorrhage.

(ii) Incised stab wound C clean cut sharp margin vertically over anterior-abdominal region in the middle; 7 cm below xiphisternum size:

5 cm length * 1.75 cm width in middle; muscle - deep

(iii) Another: Incised stab wound over Rt side of lower back region over Rt loin, posteriorly;

size: length 2 cm * width 1.75 cm in middle; situated over Rt side of lower back; 2 cm lateral to lumbar spine margins sharp; vertically

(iv) Incised wound, Horizontal; one Rt mastoid region, length 5 cm ; width = 1 cm ; cutting wound on Rt ear-lobule; Rt mastoid region extended upto Rt side of Neck; sharp margin;

(v) Bruise mark 3 cm * 2 cm one left side of forehead."

18. From the aforementioned injuries, it is evident that the deceased was brutally assaulted by the sharp edged weapon like knife. The FSL report also reveals that the blood of the deceased having blood group of 'A' has been found on the t-shirt of the accused No.2 and also knife, which is recovered on the instant of accused No.1-Suresh. The medical evidence corroborates the ocular evidence.

19. We may also refer to the contents of the complaint dated 21.05.2017 at Exh.22, which has been given by PW-1. He has specifically narrated the role attributed to the accused relating to the assault. The facts recorded in the complaint reconcile with the evidence given by PW-1 - complainant before the trial Court.

20. From the overall analysis of the evidence of the eye-witnesses, it is established that three accused were present on the day of incident. The charge at Exh.14 specifically narrates the role of the appellants - accused. Accused No.4 in number, have been arraigned for the offence however, the trial Court has acquitted accused No.4 - Salmanbhai Dadubhai Davaliya. The charge specifically refers that on 21.05.2017 at around 11:45 hours, the accused, who used to demand money from the deceased time and again and since the deceased had

refused to do so, the accused Nos.1 and 2 inflicted knife blows on the chest and stomach of the deceased, whereas accused No.3 caught hold of the deceased. It is alleged that accused No.4 helped accused Nos.1 to 3 by assisting them in fleeing away in his rickshaw. The trial Court has not believed the role of accused No.4 and hence, acquitted him from the offence.

21. All the eye-witnesses, as discussed hereinabove, have confirmed the role attributed to all the accused. The medical evidence also reveals that the deceased has been brutally murdered only for the reason that he has refused to pay money to the accused. From the evidence, it is revealed that the accused persons appear to be having criminal mindset, as they were demanding money from the deceased without any reason and since the deceased refused to do so, all three accused, acted in connivance with each other and committed murder in broad day light. The injuries are inflicted on vital parts. The medical evidence does not remotely suggest that the deceased had died due to single injury but in fact, he was inflicted various injuries, as mentioned in the PM report and in the evidence of the doctor, who has undertaken the post mortem of the deceased. The injuries indeed are brutal in nature. The evidence of three eye-witnesses is of sterling quality and as per the settled legal precedent, even if the evidence of a single eye-witness, who establishes himself of sterling quality, the same is sufficient enough to invite conviction in the offence. It is contended by accused No.3 that the role attributed to him is only of catching hold of the deceased and hence, the conviction recorded by the trial Court convicting for the serious offence like murder is required to be set aside. At this stage, we may refer to the provisions of law.

22. Section 114 of the IPC reads as under:

"Whenever any person who if absent would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence."

23. Section 107 of the IPC defines 'abetment'. The same is incorporated as under:

"107. Abetment of a thing.—A person abets the doing of a thing, who—

First.—Instigates any person to do that thing; or Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing."

24. The ingredients of Section 107 of the IPC are that the person abets doing of a thing who instigates any person to do that thing; or thirdly, intentionally aids, by any act or illegal omission, the doing of that thing. The case of the accused No.3 would fall in clause 'thirdly' of Section 107 of the IPC.

25. Section 108 of the IPC defines abettor, which reads as under:

"108. Abettor.—A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor."

26. Explanation-2 of Section 108 of the IPC specifically stipulates that to constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

27. Explanation-3 of Section 108 of the IPC says that, it is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor or any guilty intention or knowledge.

28. Section 114 of the IPC, as mentioned hereinabove, clarifies or imposes the punishment on the abettor in the offence, which is committed and he has made liable to be punished in consequence of the abetment and it is stipulated that he shall be deemed to have been committed such act or offence.

29. In the instant case, the evidence of the eye-witnesses confirms that accused No.3 had restricted the movement of the deceased in such a manner that the rest of the accused were able to inflict fatal blows on the vital parts of the deceased. It is not the case of the defense that the accused had inflicted only single blow. The action of accused No.3 of restricting and holding the deceased, in order to facilitate the other accused in inflicting blows of knife on the vital/ various parts of the deceased, will definitely establish that he is the abettor of commission of a serious offence like murder. The confinement of the deceased by accused no.3 facilitated the other accused to give the blows with precision, hence he cannot be shown any mercy for the act which he has committed.

30. Explanation-3 of Section 108 of the IPC clarifies that it is not necessary that the person abetted should be capable by law of committing an offence, or that he should have some guilty intention or knowledge as that of the abettor and or any guilty of intention or knowledge. Thus, it is not necessary that accused No.3 would have the same guilty intention or knowledge possessed by the rest of the accused. Hence, we find that the trial Court has not committed any error in convicting and punishing the accused No.3 along with other two accused for the offence of murder.

31. The gruesome act of accused Nos.1 and 2 will fall in clause '3rdly' of the Section 300 of the IPC, which defines murder and hence, the conviction of accused Nos.1 to 3 for the offence of murder, as defined under Section 300 of the IPC read with Section 114 of the IPC does not suffer from any perversity or illegality. The decision of the Apex Court in the case of Mariappan (supra) cannot come to the rescue of the accused, since the same does not apply to the facts of

the present case. In the instant case, the case of the accused will not fall under Exception-4 to section 300 of the IPC. The accused were already armed with knives, and brutally assaulted the deceased since he refused to succumb to their demand of money. It cannot be said that the accused had not taken any undue advantage or acted in cruel manner. The evidence also, indubitably establish the charge for the offence under section 324 of the IPC, which stipulates of causing voluntarily causing hurt. The accused had inflicted knife blows on the hand of the first informant. Similarly, since it is found that they were armed with knives, they are also precisely convicted under the provision of section 135 of the G.P.Act. The entire evidence put together by the prosecution does establish the guilt of the accused beyond a reasonable doubt . We do not find the judgement and order of conviction and sentence passed by the trial Court is tainted with any perversity or illegality.

32. In light of the aforementioned observations and facts, the appeals fail.

33. Record and proceedings shall be returned.

Registry to place a copy of this order in each of the connected matters.