

(2015) 08 GUJ CK 0032

In the Gujarat High Court

Case No : Criminal Appeal (Against Conviction) No. 1081 of 2008

Rameshkumar Sakharam Ravde (Gavde)

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 14-08-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 307

Citation : (2015) 08 GUJ CK 0032

Hon'ble Judges : S.G. Shah, J

Bench : Single Bench

Advocate : Vipul Sundesha, Advocate for P.P. Majmudar, for the Appellant; K.L. Pandya, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.G. Shah, J—Heard learned advocate Mr. Vipul Sundesha for Mr. P.P. Majmudar, learned counsel for the appellant and Mr. K.L. Pandya, learned Additional Public Prosecutor for the respondent-State.

2. The appellant has challenged his conviction by the impugned judgment and order dated 10.1.2008 in Sessions Case No. 103 of 2007 whereby Additional Sessions Judge of Fast Track Court No. 6 of Ahmedabad City has convicted the accused for the offence punishable under Section 307 of the IPC and awarded rigorous imprisonment of 7 years with fine of Rs. 5,000/- and in default of payment of fine, he has to undergo 1 month simple imprisonment with benefit of set off to be extended for the period of custody during the trial.

3. The jail report dated 27.1.2015, which is on record, shows that practically appellant was arrested on 10.11.2006 though he was convicted on 10.1.2008 and, therefore, on completion of 5 years, 8 months and 18 days of imprisonment, he was released from jail because of benefit of leave period of 1 year, 4 months and 12 days. Thereby, at present, appellant is already released after completion of the entire sentence though his bail applications were

dismissed at the relevant time in the year 2008 while filing the appeal and again in the year 2011. Therefore, practically, since appellant has already undergone entire period of sentence, this appeal would have been disposed of as infructuous, but appellant wants to confirm his acquittal since he was serving in police department and has been suspended because of such conviction.

4. However, it has never been brought on record by either of the parties that whether such suspension has ultimately been confirmed into dismissal from services or not, considering the conviction as aforesaid, since suspension was merely at the stage of initiation of such criminal proceedings. Irrespective of such facts, when appellant wants to argue the appeal on merits to confirm his acquittal, we have to scrutinize the evidence on record to verify that whether there is anything which confirms that conviction is not proper and, thereby to acquit the appellant.

5. The prosecution has examined as many as 13 witnesses and produced 20 documentary evidence to prove its case. Pursuant to complaint filed by the injured victim, the investigating agency has filed chargesheet after investigation and ultimately charge was framed at Exh. 5 on 30.7.2007 against the appellant which is to the effect that on 2.8.2006, appellant has dragged the injured victim who happens to be his wife into an auto rickshaw for pressurizing her to compromise with him in some previous dispute and when victim has refused or resisted such activities, the appellant has threatened her that if she refuses to settle the dispute and enter into compromise in previous complaint, then, he would throw her out of the auto-rickshaw onto a railway bridge so as to let her get cut by train and, thereafter, all of a sudden, he took out a surgical knife from his pocket and after keeping the head of the victim in one hand and pressing her in rickshaw, he had inflicted 5-6 serious blows on the neck of the victim with clear intention to kill her but when victim has survived during treatment, thereby, the appellant has committed an offence under Section 307 of I.P.C.

6. Since appellant has already undergone the entire sentence, what is required to be ascertained at this stage is only verification as to whether there is any substance in the appeal so as to acquit the appellant so as to enable him to get service benefit or not. For the purpose, I do not want to enter into minute details of the relationship, facts and stories between the parties since both have entered into the relationship as second marriage for both of them. However, it cannot be ignored that prima-facie, it becomes clear from the evidence that the first husband of the victim has died in an accident and there was quarrel between the appellant and victim for the amount of claim to be received by the victim because of death of her first husband. The story and evidence about their relationship is described by different relevant witnesses but it is not material at present so also the evidence regarding investigation. However, the material evidence is in the form of deposition of victim herself and there is no reason to disbelieve her version when she has deposed against her own husband about the incident in detail describing that why and how she had been attacked by the

appellant.

7. Complainant - victim is examined as PW-7 at Exh. 28, wherein, she has in categorical terms narrated the entire story and stated that at the time of incident, appellant has again inquired about the amount received by her because of death of her previous husband and when she conveyed him that she has handed over such amount to her son out of previous marriage, appellant has dragged her into the rickshaw and threatened and injured her as disclosed hereinabove. Thereupon, there was heavy bleeding from her neck and when appellant has run away leaving the rickshaw and injured victim, rickshaw driver has taken her to the hospital where she was treated and survived. During cross examination, the appellant could not disprove her version or prove his own innocence.

8. PW-9 at Exh. 34 is Doctor who has examined the victim. He has categorically stated that when victim was brought to him she was bleeding and was unable to disclose the details i.e. history of injury and since there was cut on throat which is a serious injury, he immediately took the victim into operation theatre and operated her to stop the bleeding and he has to make a puncture in her respiratory tract so as to enable the victim to take breath directly. He proves the medical case papers and though he was cross examined to some extent, there is nothing which can disprove his evidence so as to acquit the appellant.

9. Though PW-3 at Exh. 14, panch witness of recovery panchnama of victim's clothes, PW-4 at Exh. 19, mother of the accused, PW-6 at Exh. 25, panch witness of place of incident, PW-8 at Exh. 32, recovery panchnama of clothes of the accused and PW-12 at Exh. 42, panch witness of recovery panchnama of clothes of the accused have not supported the case of prosecution and, thereby, they have been declared hostile. The fact however remains that evidence of none of them is material either to disprove the involvement of the appellant or indicate his innocence except to confirm the corroboration or place of incident and presence of blood on clothes of the appellant. Therefore only because all such witnesses have turned hostile, it would not help the appellant to get rid off the conviction when other reliable, cogent and corroborating evidence is confirming his guilt.

10. As against that, PW-1 at Exh. 9, Manager of victim's office, PW-2 at Exh. 11, panchnama of place of incident, PW-5 at Exh. 22, panch witness of recovery panchnama of blood, PW-10 at Exh. 37, Executive Magistrate who recorded the Dying Declaration, PW-11 at Exh. 39, Circle Officer and sketch of place of incident and PW-13 at Exh. 45 is Investigating Officer, who has proved documents at Exhs. 46 to 52 are perfectly supporting the case of prosecution by elaborating their individual role in investigation and confirming the facts disclosed during investigation and, thereby, confirming the involvement of the appellant in commission of offence as alleged. Since all such evidence is in corroboration of the prosecution case which is already disclosed herein, I do not wish to reproduce all the details again.

11. It cannot be ignored that at Exh. 35, there is a police Yadi which is immediately filed after the incident where PSO of Maninagar police station has categorically disclosed that victim had been injured with knife by her husband. There is no reason for anybody to create such false evidence. Though victim has survived after such serious and grievous injuries on neck, the fact remains at the relevant time that she was on death-bed and, therefore, her dying declaration was recorded by Executive Magistrate and though dying declaration is now not material, the activity of carrying out such statement by the Executive Magistrate is material and, thereafter, if such Executive Magistrate is supporting the prosecution case in nut-shell and if accused has failed to rebut his evidence or to prove that he is either not knowing anything or not telling the truth, there is no reason to discard his evidence.

12. If we peruse such evidence at Exh. 37 being deposition of Executive Magistrate as PW-10, it becomes clear that he has narrated the details of his activity before the victim and facts disclosed by the victim before him during such exercise wherein there is clear statement in confirmation of FIR that husband of the victim i.e. appellant has tried to kill her, even reason of quarrel so disclosed by the victim at the relevant time, when she was on death-bed, that even after getting married to the victim the appellant was indulging into illicit relations with other women and, therefore, there was a quarrel and how appellant has asked the victim in rickshaw and the manner in which injuries were inflicted by the appellant. The appellant could not prove his innocence either by rebutting the evidence of the Doctor or by proving anything in his own favour. In addition to such fact, one of the hospital on its letter head note at Exh. 31 is also proved by the victim during her deposition, which is also material since it is in the handwriting of the victim herself wherein, it is in categorical terms addressed to the police seeking action, wherein victim has narrated the entire story which is irrespective of and independent of the present complaint and, therefore, there is no reason to disbelieve it.

13. Other documentary as well as oral evidence are otherwise in support of the prosecution case which confirm that victim has received grievous and serious injuries on her neck, which may result into her death and that such injuries were inflicted with a surgical knife by the appellant by dragging her into an auto-rickshaw and, thereafter, how victim has been treated with such evidence, more particularly, when appellant could not rebut such evidence, there is no substance in the appeal so as to acquit him only because of the reason that he is serving in police department and his acquittal may result into financial benefit to him.

14. I have also perused the impugned judgment. The learned trial Court has taken care of entire evidence. It is properly scrutinized and after proper appreciation of such evidence, the trial Court has convicted the appellant by assigning cogent reasons. Therefore, I do not find any reason to interfere with such judgment. Hence, there is no substance in the appeal and the same deserves to be dismissed and accordingly, the appeal is dismissed.

15. Registry has to send back Record & Proceedings to the concerned Court.