
(1998) 07 GUJ CK 0057
In the Gujarat High Court
Case No : Criminal Appeal No. 392 of 1992

Ramsinh Jkesinh Chauhan	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 07-07-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374
Penal Code, 1860 (IPC) — Section 299, 300, 302, 304

Citation : (1999) CriLJ 119

Hon'ble Judges : J.N. Bhatt, J;Arunkumar Kantilal Trivedi, J

Bench : Division Bench

Advocate : H.N. Jhala, for the Appellant; K.P. Raval Public Prosecutor, for the Respondent

Judgement

J.N. Bhatt, J.—A short but important question with which this Court is confronted is as to : whether the offence established by the prosecution against the appellant-original accused is a murder punishable u/s 302, IPC or culpable homicide not amounting to murder punishable u/s 304, Part II, IPC.

2. The only contention which came to be advanced before us in the course of hearing of this appeal by the Ld. Advocate for appellant Mr. Jhala is that in the facts and circumstances of the case the offence established by the prosecution cannot be said to be an offence of murder punishable u/s 302, IPC. In that it is submitted that the offence established by the prosecution is a culpable homicide not amounting to murder, and therefore, the conviction u/s 302, IPC is bad and illegal and the accused can be convicted, at the best, u/s 304, Part II of IPC. He has further, argued that the accused has been in custody since 21-6-91 and he has undergone the period in the jail for more than 7 years which should be considered as sufficient. The Ld. APP has opposed and countenanced this submission.

3. The question of murder or culpable homicide not amounting to murder has, at times, vexed many a Courts since more than a century. No doubt, there is a thin

line, but it is very fine. In order to appreciate the only contention before us, it would be expedient, at this juncture, to refer to relevant material facts emerging from the record of the case.

4. The appellant-accused is a cousin brother of the deceased. There were disputes pending between the two families in relation to the Immovable properties and many other Court cases were also pending. According to the prosecution case on account of deep-seated motive, the accused, on 21 -6-91, at about 6.00 p.m., came to the house of the complainant-Bapusinh with a stick and questioned the deceased as to why he had sold the field. Saying so, and in agitated mood, the accused gave few pushes with the stick on the chest portion and back portion which ruptured the spleen. It was, therefore, contended by the prosecution that the accused intentionally gave stick blows which culminated into the death of the deceased-Becharsinh and it was an offence of murder. Accordingly, the accused came to be charged by the Addl. Sessions Judge, Sabarkantha at Himmatnagar on 21-1-1992 in Sessions Case No. 67/91 which was denied by the accused and came to be tried.

5. In order to appreciate the charge against the accused prosecution relied on the viva-voce of following 8 witnesses :

- i) Bapusinh Becharsinh.
- ii) Dr. Manish Amaraji.
- iii) Nathusinh Kodarsinh.
- iv) Pratapsinh Bhemsinh.
- v) Badarsinh Udesinh. ;
- vi) Roopsinh Bhemsinh.
- vii) Arjunsinh Lalsinh.
- viii) Manojkumar Vechatbhai.

6. The prosecution also relied on the documentary evidence to which reference may be made at an appropriate stage by us as and when required.

7. "Upon the assessment and evaluation of the evidence on the facts and circumstances emerging from the present case, the trial Court accepted the prosecution version in toto and held the appellant-accused guilty for the murder of deceased-Becharsinh and convicted and sentenced him for life for the offence punishable u/s 302, IPC. That is how the original accused has now come up before us in this appeal u/s 374, Cr.P.C. challenging its legality and validity.

8. As observed hereinbefore we are called upon to assess and evaluate the evidence and proved facts so as to consider whether the offence committed by the appellant-original accused is murder or culpable homicide not amounting to murder. The trial Court has found that the offence committed by the appellant

was of an offence of murder holding that the accused had an intention to kill while giving pushes on the person of the deceased which culminated into rupture of spleen and resultant death.

9. So, the prosecution has successfully established that there was a homicidal death of deceased-Becharsinh and the author of the offence resulted into death is nobody else but the original accused-appellant before us. In so far as the offence committed by the accused is concerned the prosecution has established without any shadow of doubt. Homicidal death of the deceased-Becharsinh on account of injuries inflicted by the appellant-accused has been proved beyond doubt.

10. It is rightly observed that whenever the Court is confronted with such a question whether the offence is a murder or culpable homicide not amounting to murder, on the facts and circumstances, it will be convenient for it to approach the problem in three stages. The question to be considered at the first shall be whether the accused has done an act by doing which he has caused the death. In other words, the proof of such causal connection between the act of the accused and the death leads to second stage for considering whether the act of the accused tantamounts to culpable homicide as defined u/s 299, IPC.

11. If the Court reaches to conclusion that there is a case of culpable homicide then the stage for consideration of operation of Section 300, IPC comes into play. It is at this stage the Court should determine whether the facts proved on record determine the case within the ambit of anyone of the four corners of the definition of murder contained u/s 300.

12. Again, if the answer to said question is not in affirmative, the offence shall be culpable homicide not amounting to murder punishable under first or second part of Section 304, IPC depending upon various aspects whether the second or third clause of Section 299 is applicable or not.

13. It is also very rightly held in number of decisions that the distinction between an offence of murder and culpable homicide not amounting to murder is found to be real and if not properly appreciated in all probability it may result in miscarriage of justice. Clause (b) of Section 299 and Clauses (3) of Section 300 is one of the question of the extent of probability of death resulting from the intended bodily injury. In other words, it is the degree of probability of death which determines whether culpable homicide is of gravest minimum or lowest degree.

14. After having given our anxious thought to the proved facts emerging from the record of the present case, and having dispassionately heard both the sides, we have not been able to convince ourselves to uphold the conviction of the appellant-original accused u/s 302, IPC as determined by the trial Court in the impugned judgment and order. In our opinion, though the direct nexus of the accused with the proved complicity of offence is established, the prosecution has successfully compaginated the accused with the crime of culpable homicide of

the deceased-Becharsinh. Now, the question remains to be considered whether it is a culpable homicide not amounting to murder or not.

15. In this connection, we would like to highlight important aspects which remained un-impeachable from the record of the present case :

(i) The accused had used the stick;

(ii) He had inflicted the stick blows on the vital part of the body.

(iii) According to the prosecution case the injuries caused by the accused on the person of the deceased with the help of stick were not grievous and on the vital part of the body.

(iv) According to the medical evidence and PW 2 Dr. Manish at Exh. 10 the external injuries noticed by him on the dead body while conducting the autopsy were 35 and they were not grievous injuries.

(v) There was no fracture of ribs. Had the accused entertained animus to kill the deceased he would not have given four stick pushes on the chest portion of the deceased.

16. It is true that the cause of death was on account of rupture of spleen. It is clearly admitted by the Medical Officer, i.e. Dr. Manish in his evidence that he could not say as to whether the spleen was normal or enlarged. He also has not weighed the portion of spleen while conducting Post-Mortem. Even if it is assumed that the deceased had an enlarged or swollen spleen, then in that case there is nothing to infer that the accused knew about it. It is not the prosecution case that the deceased had an enlarged spleen and the accused did know about it and intentionally gave stick blows on that part of the body so that spleen could be ruptured/damaged.

17. In fact, it is for the prosecution to prove beyond reasonable doubt that the offence is a murder which the prosecution has not been able to prove. Therefore, the offence of culpable homicide committed by the accused in killing the deceased Becharsinh in the absence of any evidence of intention or even the knowledge could not be said to be an offence u/s 302, IPC.

18. In view of the aforesaid aspects and attendant facts and circumstances emerging from the record of the present case, we are of the clear opinion that the trial Court has committed serious error and has misread the evidence while holding the accused guilty of offence of murder punishable u/s 302 and resultant sentence for life imprisonment. In fact, in our opinion, from the proved facts and circumstances, the offence committed by the accused, at the best, can be said to be the culpable homicide not amounting to murder. Therefore, the contention raised on behalf of the appellant-accused that the impugned order of conviction and sentence u/s 302, IPC is illegal and at the best it may be stated that the accused could be held guilty for offence of culpable homicide not amounting to murder punishable u/s 304, Part II, IPC.

19. In the circumstances, the conviction and sentence u/s 302, IPC and resultant imprisonment for life awarded by the trial Court in the impugned judgment and order is quashed and set aside and the accused is held not guilty for the offence punishable u/s 302, IPC and instead the accused is found guilty for the offence punishable u/s 304, Part II.

20. Section 304 provides punishment for culpable homicide not amounting to murder with imprisonment for life or imprisonment of either description for a term which may extend to ten years or with fine or with both if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death. As noticed hereinabove that there was no intention to cause death on the part of the appellant-accused. However, inference can be drawn that the injuries caused by him were such bodily injuries as they were likely to cause death. Therefore, the case falls within the ambit of Section 304, Part II, IPC.

21. Our attention is drawn to the fact that the accused is undergoing imprisonment since 24-6-91. He is still in custody since then. Therefore, he has suffered total period of imprisonment for "more than 7 years. Accused has family responsibilities, he is only the earning member in the family. He has big family as stated by him in his statement before the trial Court. We have also noticed that there was no premeditation and there was no preplan. Considering the age and the family accountability of the accused and the facts and circumstances the period undergone by the accused obviously would meet the ends of justice. Amount of fine awarded by the trial Court is not disturbed.

22. In the circumstances, the appeal is partly allowed. Appellant-accused shall be released forthwith if not required in any other case.