

(2009) 05 GUJ CK 0043
In the Gujarat High Court
Case No : Criminal Appeal No. 212 of 2003

Shravan Kamal Solanki

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 07-05-2009

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 313, 374(2)
Penal Code, 1860 (IPC) — Section 302, 307, 450, 504

Citation : (2009) 05 GUJ CK 0043

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

Bench : Division Bench

Advocate : Shilpa R. Shah, for the Appellant; Dipen A. Desai, APP, for the Respondent

Final Decision : Dismissed

Judgement

Bankim. N. Mehta, J.—Appellant - convict has preferred this appeal u/s 374(2) of the Criminal Procedure Code, 1973 and challenged judgment and order of conviction and sentence passed on 27-01-2003 by learned Additional Sessions Judge (Fast Track Court-2), Bhavnagar in Sessions Case No. 141 of 2000 convicting him for the offence punishable u/s 302 and 307 of the I.P Code and sentencing him to undergo life imprisonment and to pay fine of Rs. 500/-, in default thereof, to undergo simple imprisonment for one month for the offence punishable u/s 302 of the I.P. Code and further to undergo rigorous imprisonment for three years and to pay fine of Rs. 500/- in default thereof, to undergo simple imprisonment for one month for the offence punishable u/s 307 of the I.P. Code. However, The accused was acquitted for the offences punishable u/s 450 and 504 of the I.P. Code and u/s 135 of the Bombay Police Act.

2. According to prosecution case, the accused was the cousin brother of complainant Labhuben Mansukhbhai. On 22-4-2000 at about 2-00 a.m. the accused committed trespass into the house of Mansukhbhai Chhaganbhai with

"dhariya" and gave abuses to Mansukhbhai, his wife Kadviben and their daughter Labhuben. As the accused was told not to give abuses, he caused injuries with "dhariya" to Labhuben, Mansukhbhai and also to Kadviben who intervened in the incident. Mansukhbhai succumbed to the injuries.

3. On the basis of the First Information Report lodged by Labhuben Mansukhbhai, offence was registered and investigation was started. At the end of investigation, charge sheet came to be filed for the offences punishable under Sections 302, 307, 504 and 450 of the I.P. Code and u/s 135 of the Bombay Police Act. As the offences were triable by Sessions Court, the case was committed to the Sessions Court, Bhavnagar and it was registered as Sessions Case No. 141 of 2000. Learned Addl. Sessions Judge, Fast Track Court, Bhavnagar framed charge Exh. 4 for the aforesaid offences. The accused pleaded not guilty to the charge and claimed to be tried. Therefore the prosecution adduced evidence.

4. On completion of recording of evidence, the learned trial Judge explained to the accused the incriminating circumstances appearing against him in the evidence. The accused in his further statement recorded u/s 313 of the Code of Criminal Procedure, 1973 stated that he is innocent and false case is foisted against him to grab the house. He also produced letters written by Chimanhbai Ramjibhai, the son-in-law of deceased Mansukhbhai.

5. After hearing the learned A.P.P. for the State and learned advocate for the accused, the learned trial Judge convicted the accused. Being aggrieved by the said decision, the accused has preferred this appeal.

6. We have heard learned advocate Ms. Shilpa R. Shah for appellant and learned A.P.P. Mr. A.J. Desai for the State - respondent at length and in great detail. We have perused the impugned judgment and record & proceedings of the trial court.

7. The learned advocate Ms. Shah has submitted that there were disputes between the deceased and the accused with regard to house and therefore only with a view to grab the house, the accused is falsely implicated in the offence. She has also submitted that the eye witnesses could not have identified the assailant as the incident occurred at late night. She has submitted that the letters produced on the record indicate that accused was not involved in the offence and therefore the impugned judgment is required to be set aside.

8. The learned A.P.P. Mr. Desai has submitted that the incident occurred in the house and the eye witnesses' account indicate involvement of the accused in the offence. The letters produced on record by the accused do not indicate that the accused was not involved in the offence. Hence, the learned trial Judge was justified in relying upon the prosecution evidence and no interference is warranted in the impugned judgment.

9. It appears from the prosecution case that the incident occurred around midnight in the house, of Mansukhbhai Chhaganbhai. It is not in dispute that the accused was related to the deceased.

10. The evidence of P.W. 2 Labhuben Mansukhbhai Exh. 18 indicates that the accused came to the house, used filthy language and gave "dhariya" blows to her as she told him not to give abuses. Her evidence also indicates that the accused made assault on her father Mansukhbhai and her mother Kadviben. The evidence of this witness also indicates that after the assault, she went to the hospital, took treatment and thereafter lodged the complaint.

11. The evidence of treating doctor P.W. 9 Dr. Sanatkumar Vrujlal Joshi Exh. 35 indicates that he treated Labhuben and after initial treatment, Labhuben was referred to Bhavnagar hospital. According to the witness, the injuries sustained by Labhuben were possible by "dhariya". The case-papers Exh. 36 indicate the injuries.

12. According to the Doctor at Bhavnagar Hospital P.W. 1 Dr. Lalita Shantilal Exh.16, Labhuben was admitted in the hospital on 22-4-2000 and was discharged on 26-4-2000. According to him, injuries recorded in certificate Exh. 17 were possible by "dhariya". The Certificate Exh. 17 indicates the injuries sustained by her.

13. The complaint Exh. 19 also indicates that the accused entered the house, gave abuses and caused fatal injuries to Mansukhbhai and also caused injuries to Labhuben and Kadviben.

14. The above evidence clearly indicates that Labhuben also sustained injuries by "dhariya" in the incident and the accused was responsible for the same.

15. The evidence of another injured eye witness P.W. 5 Kadviben Mansukhbhai Exh. 26 also indicates that the accused entered the house, gave abuses and caused injuries with "dhariya" to Mansukhbhai and Labhuben. According to the witness, as she tried to intervene the accused caused injuries to her.

16. The evidence of P.W. 10 Dr. Ganibhai Kasambhai Saiyed Exh. 38 and certificate Exh. 39 indicate that Kadviben was treated at the hospital and the injury No. 1 and 2 were possible by "dhariya".

17. The evidence of eye witness P.W. 6 Dineshbhai Prabhatbhai Exh. 27, the grand son of deceased Mansukhbhai also indicates that the accused made assault on deceased Mansukhbhai and also caused injuries to Labhuben as well as Kadviben.

18. In view of above evidence, it appears that the incident ensued at the house of Mansukhbhai around midnight in presence of his family members. The accused was also a family member. Therefore, it is difficult to believe that the eye witnesses could not have identified the assailant.

19. The evidence of P.W. 4 Dr. Sushilkumar Krushnakumar Exh. 24, who performed postmortem of Mansukhbhai, indicates that the injuries found on the dead body were possible by "dhariya". Postmortem Report Exh. 25 indicates the external injuries and the cause of death.

20. In view of above consistent evidence, it clearly emerges that the accused entered the house of deceased Mansukhbhai and caused fatal injuries with "dhariya" to him. It also indicates that as Labhuben and Kadviben tried to intervene, the accused also caused injuries to them. Therefore, the evidence implicating the accused in the offence is consistent and reliable. The explanation offered by the accused in his further statement does not appear to be plausible. Learned advocate for the appellant has not been able to point out any infirmity in the impugned judgment. Therefore, the learned trial Judge was justified in recording conviction of the accused and no interference is warranted in the impugned judgment.

21. For the foregoing reasons, the appeal fails and stands dismissed and judgment and order of conviction and sentence passed on 27-01-2003 by learned Additional Sessions Judge Fast Track Court No. 2), Bhavnagar in Sessions Case No. 141 of 2000 is confirmed. The muddamal be disposed of as directed by the trial court.