
(2011) 02 GUJ CK 0036
In the Gujarat High Court
Case No : Criminal Appeal No. 811 of 2005

Somabhai Titabhai Vaghela	Vs	APPELLANT
State of Gujarat and Another		RESPONDENT

Date of Decision : 25-02-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 114, 300, 302, 323, 504

Citation : (2011) 2 GLH 363

Hon'ble Judges : R.M. Chhaya, J;A.L. Dave, J

Bench : Division Bench

Advocate : J.M. Buddhbhatti, for the Appellant; D.C. Sejpal, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Chhaya, J.—The present appeal arises out of the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Fast Track Court, Kheda at Nadiad in Sessions Case No. 285 of 2003. The Appellant - accused No. 1 is sentenced u/s 302 of the Indian Penal Code for life imprisonment and fine of Rs. 1000/-, and in default, simple imprisonment for six months and accused No. 2 and 3 were acquitted.

2. The facts of this appeal are as under:

2.1 It is the case of the prosecution that, on 23.6.2003, at about 14.00 hours, while the deceased Pratapbhai along with his daughter Savitaben and wife Jasiben was at his field situated in the revenue village of Dandiyapur, Taluka Kapadwanj, District Kheda, the accused No. 1 along with one Bhalabhai Somabhai Vaghela and Tinabhai Bhembhai Vaghela assaulted deceased Pratapbhai. It is the case of the prosecution that the accused No. 1 - present Appellant attacked the deceased Pratapbhai with an axe on his forehead and original accused No. 2 and 3 caught hold off Pratapbhai while facilitated the accused No. 1 - present Appellant in inflicting blow with an axe. FIR came to be

lodged with Kapadwanj Rural Police Station. The Investigating Agency investigated the same and filed chargesheet before the learned JMFC, Kapadwanj, who, in turn, committed the same to the learned Sessions Judge, Kheda at Nadiad as the offences were exclusively triable by the Sessions Court.

3. The learned Sessions Court framed the charge at Exh.3 whereby the present Appellant along with Bhalabhai Somabhai Vaghela and Tinabhai Bhembhai Vaghela were charged for the offences under Sections 302, 323, 504 read with Section 114 of the Indian Penal Code. The accused pleaded not guilty and, therefore, the learned Sessions Court, after full fledged trial and after appreciating the evidence on record, was pleased to convict the present Appellant - original accused No. 1 and acquit the original accused No. 2 and 3 vide judgment and order dated 28.3.2005.

4. Being aggrieved by the judgment and order of conviction and sentence, the present appeal is filed by the original accused No. 1.

5. The learned Sessions Judge, while recording the order of conviction and sentence has been pleased to sentence the present Appellant - original accused No. 1 u/s 302 of the IPC for life imprisonment, and fine of Rs. 1000/- , and in default, to undergo simple imprisonment of six months.

6. Heard learned advocate Mr. Budhbhatti for the Appellant-accused and learned Additional Public Prosecutor Mr. D.C. Sejpal for the State.

7. Learned advocate Mr. Budhbhatti has taken us through the relevant evidence more particularly, oral testimony of P.W.3 Savitaben, who happens to be daughter of deceased Pratapbhai and oral testimony of P.W.4 Jasiben, wife of the deceased Pratapbhai. Both are the eye-witnesses to the incident. Learned advocate Mr. Budhbhatti has also taken us through the evidence of Dr. Manubhai Halubhai Gadhvi P.W.10 at Exh.39 Medical Officer of Kapadwanj J.B. Mehta Hospital, who had examined the deceased Pratapbhai immediately after the incident as well as oral evidence of Dr. Jashbhai Galabhai Vaghela P.W.8 who had performed the post-mortem.

8. Learned advocate Mr. Budhbhatti vehemently submitted that there was a sudden grabbing and there was no intention on the part of the accused to cause death of deceased Pratapbhai. It is further submitted that the motive expressed by the prosecution, in a way did not exist on the date of the incident, more particularly, because of the fact that the partition had already been executed between the brothers, and in order to buttress this argument further, learned advocate Mr. Budhbhatti submitted that the unfortunate incident occurred only because of some dispute between the deceased and the Appellant - accused in relation to some amount to be paid as share, which was spent towards the rituals after the death of the mother of deceased Pratapbhai. He has also made an attempt to canvass before this Court that, looking to the medical evidence, the Appellant - accused had given only one blow and, therefore, there was no intention on the part of the Appellant to kill the deceased Pratapbhai and

therefore it should be considered by this Court as 'culpable homicide not amounting to murder'. He made a feeble effort to convince this Court that, in the facts and circumstances of the present case, the fourth exception to Section 300 of IPC would apply.

9. As against this, learned APP Mr. D.C. Sejpal has opposed this appeal. It is submitted on behalf of the State that it is a full proof case wherein, the oral testimony of P.W.3 Savitaben and P.W.4 Jasiben clearly proves the guilt of the Appellant - accused. It is further pointed out that, on appreciation of other evidence as well as medical evidence, the only conclusion would be that the intention on the part of the Appellant was to kill deceased Pratapbhai. It is further pointed out by learned APP Mr. D.C. Sejpal that, on appreciating the facts and circumstances as well as the evidence adduced in this case, the Appellant is not entitled to any benefit of fourth exception to Section 300 of IPC and, therefore, the learned Sessions Court was right in convicting the present Appellant - accused u/s 302 of IPC.

10. We have perused the oral evidence as well as documentary evidence on record and we have also gone through the impugned judgment of the learned Sessions Court. It is worth-while to note that P.W.3 Savitaben is a major daughter of deceased Pratapbhai, and in her oral evidence at Exh.24 has clearly narrated and supported the case of the prosecution. Similarly in deposition of P.W.4 Jasiben, wife of deceased Pratapbhai, who was also an eye-witness has also supported the case of the prosecution.

11. The medical evidence also supports the case of the prosecution and the type of the injury which is caused by the Appellant by an axe, was sufficient enough to cause death of deceased Pratapbhai and more particularly it is evident that the intention on the part of the accused was to cause death of the victim in ordinary course.

12. It is not a universal rule that in every case of one blow the Court should always consider it to be a 'culpable homicide not amounting to murder'. It is also worthwhile to note that the presence of both the eye-witnesses at the time and place of incident is natural and consistent evidence of eye-witnesses, place of incident, nature of weapon and force of blow are relevant. The prosecution has been able to establish the guilt of the Appellant and the place of incident, and the force with which the blow was given establishes the fact that the Appellant had an intention to inflict the injury knowingly that, the same would result into death in ordinary course and, therefore, the present case does not fall within the fourth exception to Section 300 of IPC. The Appellant has not been able to show from the evidence on record that the present case falls within the scope and ambit of fourth exception to Section 300 of IPC and, therefore, the only conclusion that can be arrived is that the prosecution has been able to prove the guilt of the Appellant-accused and, therefore, the learned Sessions Court was right in convicting the present Appellant-accused u/s 302 of IPC and sentencing him for life imprisonment.

13. In view of the foregoing reasons, the appeal deserves to be dismissed and the same is accordingly dismissed. The order of conviction and sentence passed by the learned Additional Sessions Judge, Fast Track Court, Kheda at Nadiad in Sessions Case No. 285 of 2003 is hereby confirmed.