
(2013) 12 GUJ CK 0162
In the Gujarat High Court
Case No : Criminal Appeal No. 247 of 2010

State of Gujarat	Vs	APPELLANT
Mukeshbhai Panchabhai Patel Dobariya		RESPONDENT

Date of Decision : 12-12-2013

Acts Referred:

Citation : (2014) CriLJ 835

Hon'ble Judges : K.S. Jhaveri, J;K.J. Thaker, J

Bench : Division Bench

Advocate : H.S. Soni, app, for the Appellant; Yogendra Thakore, for the Respondent

Judgement

K.S. Jhaveri, J.—By way of this appeal, the appellant-State has challenged the judgment and order passed by the learned Additional Sessions Judge, Junagadh, in Sessions Case No. 33 of 2007 dated 23.12.2009, whereby, the original accused-respondent herein, has been convicted for the offence punishable u/s 304 Part I of the Indian Penal Code (for short, "the IPC") and sentenced him to undergo rigorous imprisonment for four years and fine of Rs. 1,000/-, in default of payment of fine, the original accused shall undergo further simple imprisonment for one month. The original accused has been given the benefit of set off and has been acquitted of the charge u/s 302 of the IPC and 135 of the Bombay Police Act. A complaint was filed by the complainant Harunbhai Husainbhai, inter alia alleging that he had three brothers namely Kasambhai, Yusufbhai-deceased and Habibbhai. It is alleged that the appellant herein and his parents were living beside the house of Yusufbhai and therefore, the appellant herein used to go to Yusufbhai's house and during that period, the appellant herein having illicit relation with the wife of Yusufbhai. It is further alleged that on 27.10.2006, Yusufbhai saw the present appellant and his wife in absurdity condition, therefore, he informed the said fact to the complainant. Thereafter, the complainant called the present appellant and slapped him. After some time, while Yusufbhai was going to his pan shop, the appellant herein caught hold of

him and inflicted knife blows on the chest and stomach of the Yusufbhai. Upon hearing the shouts of deceased, other people were gathered at the scene of offence and taken away said Yusufbhai to the hospital, where he declared dead. In this connection a complaint was filed by the complainant.

1.1. After necessary investigation was carried out, the respondent herein came to be arrested. On completion of investigation, charge-sheet was filed before the appropriate Magisterial Court. Since the case was Sessions triable, it was committed to Sessions Court, Junagadh. The respondent herein pleaded not guilty and therefore, charge was framed and trial was initiated.

1.2. To prove the case against the present appellants, prosecution had examined following witnesses:

1.3. The prosecution had also relied upon the following documentary evidences so as to bring home the charges against the respondent

1.4. At the end of trial, the Court below recorded the further statement of the accused u/S. 313 of the Criminal Procedure Code and ultimately, passed the impugned judgment and order of conviction and sentence. Being aggrieved by the same, the present appeal has been preferred by the appellant-State for enhancement.

2. Learned APP for the appellant-State has submitted the trial Court has committed error in convicting the respondent u/s 304 Part I of the IPC. He further submitted that looking to the injuries received by the accused, it cannot be said that the reasoning adopted by the Trial Court is just and proper. The Trial Court ought to have convicted the respondent herein u/s 302 of the IPC.

3. Learned advocate for the respondent has submitted that the trial Court after appreciating the evidence on record has passed the impugned judgment/order. Therefore, he requested this Court not to interfere with the impugned judgment and order of the Trial Court.

4. Heard learned counsel for the respective-parties and considered the documents forming part of the appeal as well as original record summoned from the trial Court. In this case, the prosecution has examined PW-1 Dr. Atul Chandulal Kunadiya at Exhibit-9, who has conducted the post-mortem of the dead body of the deceased. He has categorically stated that death was caused due to Hemorrhagic shock on account of injury to vital organs. In column No. 17 of the post-mortem Note, the injuries described as under:

17. 1. Fresh stab wound about 3 c.m. x 0.5 oblique at lever of left nipple on left ante costal between mid and axillary line.

2. Fresh stab wound about 5 c.m. x 1 c.m. x caving - 7 c.m. below injury No. 1.

3. Fresh stab wound about 5 c.m. x 0.1 c.m. x caving oblique - 7 c.m. below injury No. 2.

4. Fresh incised wound 5 c.m. x 1 c.m. x incised deep on left anterolateral wall.
5. Fresh wound 5 c.m. x 1 c.m. x caving deep on right chest just right lever and stomach. Edge margin clean cut blows oblique.
6. Fresh incised wound 1 c.m. x 0.5 c.m. x muscle deep oblique just right side of umbilicus.
7. Fresh incised wound 1 c.m. x 0.5 just left side of umbilicus.
8. Fresh incised wound over back of left elbow - 3 c.m. x 0.1 deep.

5. This witness further stated that the aforesaid injuries were sufficient to cause death in routine course. Thus, from the testimony of the above witness, we are of the view that the death of the deceased was a homicidal death.

6. We have carefully gone through the evidence of the witnesses as also the medical evidence and find that the presence and involvement of the original accused-respondent has been proved by the prosecution beyond reasonable doubt. However, on perusal of the evidence of the witnesses, it appears that the incident in question had happened on the spur of the moment. It has come on record that the deceased and the respondent herein were good friends and there was no any previous enmity between them. Further, the appellant could not be said to have taken any undue advantage or acted in a cruel manner. Considering the above aspects, we are of the considered opinion that the trial Court has rightly convicted the respondent herein u/S. 304, Part I of the IPC. We are in complete agreement with the findings recorded by the Trial Court, no illegality or infirmity has been committed by it.

7. It is matter of fact that the incident in question took place out of sudden provocation. Considering the background fact and circumstances of the case though, while confirming with the reasoning and findings recorded by the Court below for conviction u/s 304 Part I of the IPC, we find that the sentence imposed by the court below is on the lower side. Therefore, the sentence imposed by the trial Court requires to be enhanced. It has consistent practice of this Court that for the offence u/s 304 Part I of the IPC, the Court has sentenced 10 years imprisonment. However, considering the peculiar facts and circumstances of the case, we are of the opinion that if the sentence is enhanced to seven years, while retaining the amount of fine and the default sentence the same would meet the ends of justice. For the foregoing reasons, the present appeal is partly allowed. The judgment and order under challenge is upheld and the substantive sentence imposed by the learned trial Judge is modified and enhanced to the extent that the appellant now shall undergo rigorous imprisonment for 07 (seven) years instead of 4 years rigorous imprisonment. The rest of the part of the judgment and order of conviction and sentence remains unaltered. If the appellant is on bail, he shall surrender to the custody within a period of eight weeks from today. R & P be sent back forthwith.