
(2015) 08 GUJ CK 0053

In the Gujarat High Court

Case No : Criminal Appeal Nos. 7, 8 of 1999 and Criminal Revision Application
No. 43 of 1999

State of Gujarat

APPELLANT

Vs

Nileshkumar Govindbhai Parmar

RESPONDENT

Date of Decision : 20-08-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 377, 378(1)(3)
Penal Code, 1860 (IPC) — Section 302

Citation : (2015) 08 GUJ CK 0053

Hon'ble Judges : K.S. Jhaveri, J;G.B. Shah, J

Bench : Division Bench

Advocate : C.M. Shah, APP, for the Appellant; Sadhana Sagar and Richa Shah,
Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

K.S. Jhaveri, J—These Criminal Appeals as well as the Criminal Revision Application have been directed against the judgment and order dated 29/09/1998 passed by the learned Additional Sessions Judge, Court No. 3, Ahmedabad (City) in Sessions Case No. 252 of 1997 whereby, the learned Sessions Judge was pleased to convict the accused for the offence punishable under Sections 304(I) of the Indian Penal Code, 1860 ("the IPC" for brevity) and ordered to undergo 07 years" rigorous imprisonment and fine of Rs. 1,000/- and in default, further rigorous imprisonment for 02 months. Criminal Appeal No. 7 of 1999 filed under Section 377 of the Criminal Procedure Code, 1973 ("the Code" for brevity) by the State is for enhancement of sentence, whereas, Criminal Appeal No. 8 of 1999 filed by the State under Section 378(1)(3) of the Code and Criminal Revision Application No. 43 of 1999 filed by one of the witnesses are against acquittal of the accused from the offence punishable under Section 302 of IPC.

2. Heard Ms. C.M. Shah, learned Additional Public Prosecutor, for the State, Ms.

Sadhana Sagar, learned advocate for the accused and Mr. Dave, learned advocate for the revisionist.

3. Brief facts of the prosecution case are that the accused and the deceased were serving in a factory namely Prem Conductor factory situated at Vatva. That, on 29/01/1997 since the accused was sitting idle the deceased scolded him and sent him back home marking his absence, keeping grudge of the same, on 31/01/1997, the accused assaulted the deceased with Gupti and thereby, committed murder of the deceased. Accordingly, the accused was alleged to have committed the offence under Section 302 of the IPC, for which, complaint had been lodged against him.

4. In support of the case, the prosecution recorded statements of witnesses and collected several documentary evidence and after having found sufficient evidence and material against the accused, he came to be charge-sheeted for the alleged offence.

5. As the case was triable by the Court of Sessions, learned Metropolitan Magistrate, Court No. 19, Ahmedabad committed the same to the Sessions Court at Ahmedabad (City). The learned trial Judge framed Charge against the accused for the alleged offence. The Charge was read over to the accused to which, he pleaded not guilty and claimed to be tried.

6. In order to bring home the charge against the accused, the prosecution has examined as many as 14 witnesses and also produced several documentary evidence.

7. On submission of closing pursis, the Further Statement of the accused under Section 313 of the Code was recorded. The accused denied involvement in the crime. After hearing both the sides and on appreciation of the evidence adduced before the trial Court, the accused came to be convicted, as aforesaid.

8. Ms. Shah, learned Additional Public Prosecutor, submitted that the learned trial Judge has not properly appreciated oral as well as documentary evidence produced on record and has erred in holding that the prosecution has failed to prove the charge against the accused beyond reasonable doubt. He submitted that the prosecution has examined in all 14 witnesses, who have supported the case of the prosecution, however, the learned trial Judge has not properly appreciated the evidence of the said witnesses and thereby, the finding recorded by the learned trial Judge that the prosecution has failed to prove the charge against the accused by leading legal, reliable and impeachable evidence, is contrary to the evidence available on record. She took us to the medical evidence and submitted that the deceased had sustained four injuries on his body out of which, the injury Nos. 1 and 4 were on the vital parts of the body and accordingly, the trial Court has committed a grave error in converting the offence punishable from Section 302 of the IPC to Section 304(I) of the IPC inasmuch as, before reaching to the hospital, the deceased had died. She submitted that the case of the prosecution was supported by the oral as well as documentary

evidence, however, the learned trial Judge has wrongly convicted the accused for the offence punishable under 304(I) of the IPC and the accused ought to have been convicted for the offence punishable under Section 302 of the IPC. Last but not the least, she submitted that the present appeals may be allowed in the interest of justice. Whereas, the learned advocate for the accused submitted that the case on hand rests upon the circumstantial evidence and though there was no direct evidence available on record to bring home the charge against the accused and only upon the injuries sustained on the vital part of the body of the deceased, the learned trial Judge has held that the prosecution has proved the charge against the accused beyond reasonable doubt, which is erroneous and contrary to the evidence on record and hence, present Revision Application as well as the appeals filed by the State deserve to be dismissed.

9. We have considered the above-referred submissions made by the learned advocates for the parties and in light of the same, we have also gone through the impugned judgment and order as well as the record and proceedings related to the case on hand and considering the reasoning given and the conclusion arrived at by the learned trial Judge, we are of the opinion that the learned trial Judge has rightly converted the offence punishable under Section 302 of the IPC to Section 304(I) and we are in complete agreement with the same. Thus, on going through the impugned judgment and order carefully, dealing with all the aspects of the matter, this Court is in agreement with the conclusion arrived at and findings recorded by the learned trial Judge, however, we are of the considered opinion that while imposing lesser sentence, the learned trial Judge has not properly considered the seriousness of the offence and in our considered view, the sentence of 07 years" rigorous imprisonment, imposed by the learned trial Judge being on lower side, it should be modified and enhanced to 10 years" rigorous imprisonment and to that extent the impugned judgment and order requires to be modified.

10. In view of the aforesaid discussion and observations, the Criminal Appeal being No. 7 of 1999 filed by the appellant - State succeeds in part and the impugned judgment and order dated 29/09/1998 passed by the learned Additional Sessions Judge, Court No. 3, Ahmedabad (City) in Sessions Case No. 252 of 1997 is hereby modified and it is held that the accused shall have to undergo 10 years" rigorous imprisonment (instead of 07 years" rigorous imprisonment imposed by the trial Court). The rest of the order shall remain unaltered. It is reported that the accused is at large on bail and hence, he is directed to surrender before the concerned jail authority to undergo the sentence imposed upon him as aforesaid, within a period of 08 (eight) weeks from today. His bail bond shall stand cancelled accordingly. Accordingly, another Criminal Appeal being No. 8 of 1999 filed by the State and Criminal Revision Application No. 43 of 1999 filed by one of the witnesses against acquittal from the offence punishable under Section 302 of the IPC, fail and are dismissed. Registry to send back the record and proceedings to the trial Court forthwith.