

(2016) 05 GUJ CK 0028
In the Gujarat High Court
Case No : Criminal Appeal No. 3082 of 2008

State of Gujarat

APPELLANT

Vs

Parbatsinh Dhulsinh Chauhan

RESPONDENT

Date of Decision : 06-05-2016

Acts Referred:

Evidence Act, 1872 — Section 32

Penal Code, 1860 (IPC) — Section 302, 307, 498A, 504

Citation : (2016) 3 Crimes 172

Hon'ble Judges : M.R. Shah and A.J. Shastri, JJ.

Bench : Division Bench

Advocate : Ms. Nisha Thakore, APP, for the Appellant; HCLS Committee and Mr. Manoj T. Danak, Advocates, for the Respondent

Final Decision : Partly Allowed

Judgement

M.R. Shah - Feeling aggrieved and dissatisfied with the impugned judgment and order of acquittal passed by the learned Additional Sessions Judge and Fast Track Court No.1, Sabarkantha at Himmatnagar (hereinafter referred to as "the learned trial court" for short) in Sessions Case No.43 of 2008, by which the learned trial court has acquitted the accused for the offences punishable under sections 302, 307, 498A and 504 of Indian Penal Code, the State has preferred present Criminal Appeal.

2. The case of the prosecution, in nutshell, is as under :-

"That one Lalsinh Parbatsinh Chauhan, son of the deceased as well as the son of the original accused lodged a complaint with Himmatnagar Town Police Station against the original accused for the offences punishable under sections 302, 307, 498A and 504 of Indian Penal Code, which was registered as First Information Report being CR No. I-389 of 2007. It was the case on behalf of the prosecution and the original complainant that the original accused was physically and mentally harassing the deceased ? wife of the accused, and was quarrelling for household work. That on 26/11/2007 in the afternoon at about 16.00 hours,

when there was a quarrel, the accused had broken T.V. and therefore, deceased Taraben told him why he has broken T.V. and therefore, the accused got angry, and abused her and with an intention to kill her, threw stove with kerosene on her body, as a result of which she sustained burn injuries. Therefore, it was alleged that the original accused committed offences punishable under sections 302, 307, 498A and 504 of Indian Penal Code."

2.1. That the victim ? now deceased, was immediately taken to the Civil Hospital where she was treated by Dr. Manishbhai Amraji Suvera, Medical Officer, Civil Hospital, Himmatnagar. A Vardhi was sent to the Executive Magistrate to record dying declaration of the victim/deceased on 26/11/2007 at about 5.45 PM. The Executive Magistrate record dying declaration of the victim/deceased at 18.20 hours on 26/11/2007 itself. The statement of the victim herself was recorded by ASI ? Natvarbhai Jodhabhai Tabiyar - PW No.14. On the said statement, thumb impression of the victim/deceased Taraben was also taken. The complaint given by the deceased was recorded by said ASI which is at Ex.33. Before the Executive Magistrate as well as in the complaint which was given by the victim herself, which was recorded by ASI ? Natvarbhai Jodhabhai Tabiyar PW No.14, victim ? deceased has categorically stated that at about 3.30 PM on 26/11/2007, she and her husband were alone in the house and at about 3.30 PM she was preparing tea on the stove and at that time, her husband started abusing her and when she told him not to use abusive language, he started beating her and also broken TV and when she told him not to do the same, her husband became angry and threw burning stove with kerosene on her body, as a result of which she sustained burn injuries.

2.2. That thereafter, investigating officer, during the course of the investigation recorded statements of the concerned witnesses; he collected documentary evidences. The deceased died on 1/12/2007. Therefore, he sent Yadi for inquest panchnama; he also obtained postmortem report; he sent muddamal to the FSL. He also prepared panchnama of the place of incident.

2.3. On conclusion of the investigation, investigating officer filed charge-sheet for the offences punishable under sections 302, 307, 498A and 504 of Indian Penal Code.

2.4. As the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Sessions Court, Sabarkantha at Himmatnagar, which was transferred to the Court of learned Additional Sessions Judge and Fast Track Court No.1, Sabarkantha at Himmatnagar which was registered as Sessions Case No.43 of 2008.

2.5. That the learned trial court framed Charge against the accused at Ex.5 for the offences punishable under sections 302, 307, 498A and 504 of Indian Penal Code.

2.6. The accused pleaded not guilty and therefore, he came to be tried by the learned trial court for the aforesaid offences.

2.7. To prove the case against the accused, the prosecution examined the following witnesses :-

Oral Evidence

PW No.

Name of the Prosecution Witnesses

Ex. No.

1

Cheharsinh Khodsinh Chauhan ? Panch Witness

9

2

Punjisinh Dansinh Chauhan - Panch Witness

11

3

Himmatsinh Javansinh Chauhan - Panch Witness

13

4

Prahladsinh Ramsinh Chauhan - Panch Witness

14

5

Dipsinh Bhemsinh Chauhan - Panch Witness

16

6

Dr. Vipulkumar Sanatkumar Jani ? Witness

17

7

Mansinh Dhulsinh Chauhan ? Witness

21

8

Ramilaben Bhikhusinh Chauhan ? Witness

22

9

Bhathiji Ransinh Parmar ? Witness

23

10

Maniba ramsinh Parmar ? Witness

24

11

Lalsinh Parbatsinh Chauhan - complainant

25

12

Sardarsinh Jehaji Parmar - Witness

27

13

Dy. Mamlatdar ? Dhirajkumar Haribhai Patel ? Witness

29

14

ASI ? Natvarbhai Jodhhabhai Tabiyar ? Witness

32

15

Mangalsinh Madarsinh Vaghela ? investigating officer

34

16

Dr. Manishbhai Amraji Suvera ? Witness

43

2.8. Through the aforesaid witnesses, the prosecution also brought on record the following documentary evidences :-

Documentary Evidence

Sr. No.

Particulars

Ex. No.

1

Inquest Panchnama

10

2

Panchnama of the place of offence

12

3

Panchnama of the recovery of muddamal from the place of offence

15

4

PM Note

19

5

Original complaint.

26

6

Letter written to the Executive Magistrate for recording dying declaration.

30

7

Dying Declaration

31

8

Statement of the victim/deceased before the investigating officer

33

9

Letter written to the Medical Officer regarding consciousness of the victim for recording her statement.

35

10

Statement of the victim recorded by the Police Sub Inspector.

36

11

Copy of the letter addressed for investigation after death of the victim.

37

12

Muddamal Ravangi Nondh

38

13

Receipt issued by FSL, Ahmedabad for receipt of the Muddamal

39

14

Letter of FSL, Ahmedabad

40

15

Report of the FSL, Ahmedabad

41

16

Letter of the FSL, Himmatnagar to FSL, Ahmedabad

42

17

Medical Certificate of the victim/deceased

44

18

Case Papers of victim/deceased issued by General Hospital, Himmatnagar

45

2.9. After closing pursis was submitted by the prosecution, Further Statement of the accused came to be recorded under section 313 of the Code of Criminal Procedure. In his Further Statement the original accused stated that since 4 to 5 years his wife was not keeping good health and therefore, she was scared of the illness and therefore, while preparing tea, because of the flame of the stone, she got herself burnt. He denied that he was ill-treating and/or harassing the deceased - his wife.

2.10. At the conclusion of the trial, by the impugned judgement and order, mainly relying upon the deposition of the Dr. Manishbhai Amraji Suvera - PW No.16 - Ex.43, in which the Doctor has stated that when the deceased was taken to the hospital, she gave history before him that because of the busting of the stove, she sustained burn injuries and ignoring the complaint which was given by the deceased herself - Ex.33 and dying declaration recorded by the Executive Magistrate Ex.31, the learned trial court has acquitted the accused by giving him benefits of doubt.

2.11. Feeling aggrieved and dissatisfied with the impugned order of acquittal passed by the learned trial court, the State has preferred present Criminal Appeal under section 378 of the Code of Criminal Procedure.

3. Submissions on behalf of the State :

3.1. Ms. Nisha Thakore, learned Additional Public Prosecutor appearing on behalf of the State has vehemently submitted that in the facts and circumstances of the case, the learned trial court has materially erred in acquitting the original accused.

3.2. Ms. Nisha Thakore, learned Additional Public Prosecutor appearing on behalf of the State has further submitted that in the present case the prosecution has been successful by leading cogent evidence in proving the case of the prosecution that the original accused poured kerosene from the stove on the deceased. It is submitted that in the present case, in the dying declaration given by the deceased before the Executive Magistrate which was recorded immediately at 18.20 hours i.e. 5.45 PM and even in the complaint which was given by the victim herself, which was recorded by ASI ? Natvarbhai Tabiyar ? PW No.14, she has categorically stated the manner in which her husband committed the offence.

3.3. Ms. Nisha Thakore, learned Additional Public Prosecutor appearing on behalf of the State has further submitted that the learned trial court has materially erred in discarding the deposition of the Executive Magistrate, dying declaration which was given by the victim/deceased and even the complaint - Ex.33 which was given by the deceased herself which was recorded by PW No.14.

3.4. Ms. Nisha Thakore, learned Additional Public Prosecutor appearing on behalf of the State has further submitted that the learned trial court has materially erred in acquitting the original accused relying on the deposition of the Dr. Manishbhai Suvera ? PW No.16 - Ex.43 and history given by the deceased before the said Doctor in which according to the doctor, she stated that she sustained burn injuries because of bursting of the stove while she was preparing tea on the stove. It is submitted that, however, the learned trial court has not properly appreciated the fact that from the Panchnama of the place of incident i.e. from the room, no such broken stove was found. It is submitted that, therefore, the learned trial court ought to have considered the dying declaration given by the victim, recorded by the executive Magistrate and complaint ? Ex.33, given by the

victim, which was recorded by the PW No.14.

3.5. Ms. Nisha Thakore, learned Additional Public Prosecutor appearing on behalf of the State has heavily relied upon the decision of the Hon"ble Supreme Court in the case of Sudhakar v. State of Madhya Pradesh, reported in (2012) 7 SCC 569 as well as another decision of the Hon"ble Supreme Court in the case of Nallam Veera Satyanadam and others v. Public Prosecutor, High Court of A.P., reported in (2004) 10 SCC 769, in support of her submission that in case of multiple dying declaration, it is the duty of the Court to consider each dying declaration independently on its own merits as to its evidentiary value and one cannot be rejected because of the contents of the other.

Making above submissions and relying upon above decisions, it is requested to allow the present appeal and quash and set aside the impugned judgement and order and convict the original accused for the offences punishable under sections 302, 307, 498A and 504 of Indian Penal Code.

4. Present appeal is vehemently opposed by Mr. Danak, learned advocate appearing on behalf of the original accused.

4.1. Mr. Danak, learned advocate appearing on behalf of the original accused has vehemently submitted that present is an appeal under section 378 of the Code of Criminal Procedure challenging the impugned judgement and order of acquittal passed by the learned trial court. It is submitted that therefore unless the findings recorded by the learned trial court are found to be perverse and/or contrary to the evidence on record, which has resulted into miscarriage of justice, interference by the appellate court against the order of acquittal is not warranted and justified.

4.2. Mr. Danak, learned advocate appearing on behalf of the original accused has vehemently submitted that in the present case, the findings recorded by the learned trial court are on appreciation of evidence more particularly deposition of Dr. Manishbhai Suvera - PW No.16 so stated in the medical certificate produced at Ex.44. It is submitted that Dr. Manishbhai Suvera - PW No.16 has categorically stated in his deposition that while giving history before him the victim has not stated that her husband has poured kerosene on her and set her ablaze. It is submitted that the said witness has categorically stated that while giving history the victim/deceased had categorically stated that she sustained burn injury because of burst of the stove while she was preparing tea at about 3.00 PM. It is submitted that the said witness is an independent and reliable witness. It is submitted that the history given by the victim before the said Dr. Manishbhai Suvera ? PW No.16 was the first in point of time. It is submitted that therefore, relying upon the deposition of Dr. Manishbhai Suvera ? PW No.16 ? Ex.43 and medical certificate issued by him at Ex.44, when the learned trial court has acquitted the original accused, the same is not required to be interfered with by this court in exercise of the appellate jurisdiction. Making above submissions it is requested to dismiss the present appeal.

5. Conclusion : -

5.1. Heard the learned advocates appearing on behalf of the respective parties at length. We have perused the impugned judgement and order passed by the learned trial court acquitting the original accused and findings recorded by the learned trial court while acquitting the original accused. We have re-appreciated the entire evidence on record.

5.2. At the outset, it is required to be noted that in the present case, as such, it can be said that there are multiple dying declarations. From the evidence on record, it appears that the first oral dying declaration can be said to be before Dr. Manishbhai Suvera given by the victim/deceased when she was admitted to hospital and when she gave history before the said Dr. Manishbhai Suvera ? PW No.16. Second oral dying declaration can be said to be in the form of complaint given by the victim/deceased herself which was recorded by ASI ? Natvarbhai Jodhabhai Tabiyar - PW No.14 and dying declaration recorded by the Executive Magistrate ? Ex.31. As per the Dr. Manishbhai Suvera ? PW No.16, when the victim was brought to the hospital, she gave history before him that she sustained burn injuries because of the busting of the stove while she was preparing tea. However, in the complaint which was given by the victim herself, which was recorded by ASI ? Natvarbhai Tabiyar - PW No.14, which was recorded immediately in the hospital and in the statement recorded by investigating officer - Mangalsinh Vaghela ? PW No.15, who has been examined at Ex.34 and even in the dying declaration recorded by the Executive Magistrate ? Ex.31, the victim/deceased has categorically stated that her husband used to quarrel with her time and again because of the household work and on the date of incident, when she was preparing tea, her husband quarrelled with her and he had broken TV and therefore, when she asked her husband - accused that why he has broken TV, he became angry and poured kerosene from the stove which was burning and he set her ablaze and she started burning and therefore, she shouted and therefore, the neighbours came to rescue her, however her husband ran away and thereafter her son Lalsinh took her to the hospital. The victim is consistent in dying declaration ? Ex.31; complaint ? Ex.33 recorded by ASI Natvarbhai and statement recorded by investigating officer - Mangalsinh Vaghela ? Ex.36. However, the learned trial court has ignored the aforesaid voluminous evidence on record and has acquitted the original accused relying upon deposition of Dr. Manishbhai Suvera - PW No.16, who has been examined at Ex.43 and history recorded by him, so stated in the medical certificate Ex.44. However, the learned trial court has not considered each dying declaration independently on its own merits and has also not considered whether the history given by Dr. Manishbhai Suvera is supported by any other evidence or not.

5.3. At this stage it is required to be noted that in the panchnama of the place of incident, no broken stove has been found. Therefore, history recorded by Dr. Manishbhai Suvera which alleged to have been given by the victim that she sustained injury because of the busting of the stove, has not been corroborated

and/or supported by any of the evidences.

5.4. At this stage, decisions in the cases of Sudhakar (supra) as well as Nallam Veera Satyanadam and others (supra) are required to be referred to and considered.

5.5. In the case of Nallam Veera Satyanadam and others (supra) in case of multiple dying declarations, the Hon"ble Supreme Court has observed and held that in case of multiple dying declarations it is the duty of the Court to consider each dying declaration independently on its own merits as to its evidentiary value and one cannot be rejected because of the contents of the other. It is further observed and held that court has to consider each of them in its correct prospective and satisfy itself which one of them reflect true state of affairs.

5.6. In the case of Sudhakar (supra) the Hon"ble Supreme Court upheld conviction on the basis of second and third dying declarations. In the aforesaid decision, it is observed and held by the Hon"ble Supreme Court that where multiple dying declarations made by the deceased are either contradictory or are at variance with each other to a large extent, test of common prudence would be to first examine which dying declaration is corroborated by other prosecution evidence.

5.7. Applying the law laid down by the Hon"ble Supreme Court in the aforesaid decisions to the facts of the case on hand and more particularly when the first oral dying declaration in the form of history, recorded by the Doctor, is not corroborated by any other evidence, more particularly in the panchnama of the place of incident, no broken stove has been found and in the subsequent dying declarations the victim/deceased has consistently stated that her husband has poured kerosene on her from the burning stove and after receiving injuries when she shouted, her husband ran away and neighbours came to rescue and thereafter her son came and took her to the hospital, we are of the opinion that the original accused can be held guilty for the homicidal death of the deceased relying upon and considering the deposition of the Executive Magistrate ? Dhirajkumar Haribhai Patel ? PW No.13 ? Ex.29, dying declaration recored by the Executive Magistrate ? Ex.31, deposition of ASI Natvarbhai Tabiyar PW No.14 - Ex.32, who recorded the first statement of the victim ? Ex.33, deposition of investigating officer - Mangalsinh Vaghela PW No.15 - Ex.34 and statement of the victim recorded by him - Ex.36.

5.8. Now that takes us to what offence the accused has committed. From the evidence on record, it appears and even according to the victim and so stated by her in her statement Ex.36 that her husband came after consuming liquor and there was quarrel and he started abusing the victim and when the victim told him not to use abusive language, the accused became angry and broke TV and thereafter when the victim told him why he has broke TV, the accused became angry and poured kerosene on her from the burning stove. Even the conduct on the part of the accused i.e. after the incident, he ran away and even did not take

the victim to the hospital and subsequently her son took her to the hospital, also goes against him.

Considering the aforesaid facts and circumstances of the case, we are of the opinion that the accused can be said to have committed offence under section 304 Part-I of Indian Penal Code and consequently is held guilty for the offence under section 304 Part-I of Indian Penal Code.

5.9. We have heard the learned advocate appearing on behalf of the original accused on sentence. He has requested to take lenient view as by now more than 8 years have passed. However, considering the manner in which the accused committed the offence and poured kerosene on the victim and thereafter ran away and did not even take the victim to the hospital, we are of the opinion that no lenient view can be taken.

5.10. We are of the opinion that while convicting the original accused for the offence punishable under section 304 Part-I of Indian Penal Code if the accused is sentenced to undergo Rigorous Imprisonment for a period of 10 (ten) years, the same can be said to be adequate punishment commensurate with the gravity of the offence committed by the accused.

6. For the reasons stated above, the present Appeal succeeds in part. The impugned judgment and order dated 30/9/2008 passed by the learned Additional Sessions Judge, Sabarkantha at Himmatnagar in Sessions Case No.43 of 2008 is hereby set aside and the respondent-original accused is held guilty for the offence punishable under Section 304 Part-1 of the Indian Penal Code and is sentenced to undergo rigorous imprisonment for 10 years and pay a fine of Rs. 10,000/-, and in default, to undergo further rigorous imprisonment of three months. The present Appeal is partly allowed to the aforesaid extent. Time to surrender to the respondent-original accused to undergo sentence as per the present judgment and order is hereby granted upto 26/6/2016.

7. Appeal partly allowed.