

(2013) 11 GUJ CK 0005
In the Gujarat High Court
Case No : Criminal Appeal No. 1030 of 2008

Sureshbhai Ratilal Chauhan

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 11-11-2013

Acts Referred:

Citation : (2013) 11 GUJ CK 0005

Hon'ble Judges : Z.K. Saiyed, J; Akil Kureshi, J

Bench : Division Bench

Advocate : Mrudul M. Barot, No. 1, for the Appellant; H.L. Jani, APP for Opponent/Respondent No. 1, for the Respondent

Judgement

Akil Kureshi, J.—The appellant-accused has challenged judgment dated 18.12.2007 rendered by learned Additional Sessions Judge, Anand in Sessions Case No. 57 of 2007. He was charged with offences punishable under Sections 302 and 504 of IPC. He was convicted for offence u/s 302 and sentenced to imprisonment for life. Fine of Rs. 1000/- was awarded and, in default of payment of fine, further sentence of six months was awarded. Briefly stated the prosecution version was that:

On 06.02.2007, at about 8 O'clock in the evening, the accused alongwith the juvenile assailant assaulted deceased Balvantbhai suspecting him of having developed illicit relations with his wife. The accused carried knife and gave several blows to the deceased on all parts of the body with such weapon. His juvenile companion was carrying a hockey stick with which he had given blows to the deceased.

2. Initially, charge was framed against both the persons at Exh. 9. Later on, finding that Maheshbhai Somabhai was below 18 years of age, he was referred to the juvenile board and a fresh charge below Exh. 19 was framed solely against the present appellant.

3. The incident was witnessed allegedly by the first informant Falguniben

Fatehsinh P.W. 3. Her deposition was recorded below Exh. 32. She was the cousin sister of deceased Balvant. On the date of the incident i.e. on 06.02.2007, she was proceeding to see her matrimonial uncle Mukeshbhai, who had met with an accident. She was going with her uncle, aunt and sister. At that time, her cousin brother came and informed them that deceased Balvant was being assaulted by accused Suresh and Mahesh Somabhai @ Dholo. She therefore, ran to the place and saw that the said persons were beating up her brother at the end of the lane. Accused Suresh was giving knife blows and Dholo was giving blows with a hockey stick. Suresh gave blows on the chest, on private part, on the hands etc. At that time, her cousin brother Bipin and one Pappu @ Pravin were trying to save Balvant. Immediately thereafter other members of the family also arrived at the site. Thereupon, the accused ran away. Balvant was shifted to a hospital at Sarsa from where under medical advice, he was taken to another hospital where he died while being taken to the hospital.

In the cross examination she stated that after she was informed by Pintoo about the assault, she reached the place in about 5 minutes. She was questioned about the presence of light. She stated that there was a street light right at the place where the assault was taking place and such light was on. When she reached, Suresh and Dholo ran away carrying with them the knife and the hockey stick.

4. The FIR lodged by this witness was produced at Exh. 33 in which also she had given similar version.

5. Another eyewitness Pravinbhai Somabhai Chauhan, P.W. 4 was examined below Exh. 34. He deposed that on 06.02.2007 after his work, he returned home at about 6.30. After taking bath he went to the market for eating an omelet at the stall from where he returned between 7.30 and 8. When he was returning Balvant was coming on bicycle from his house. Accused Suresh snatched his bicycle and started hitting him with the knife. He gave knife blows on the left side of the chest, on the right hand side below the stomach and under left arm. Balvant fell down. Mahesh also gave hockey blows to him. He tried to save him. In the process, he fell down. Thereafter, family members of Balvant arrived at the site upon which Suresh and Dholo went away. He was wearing cream coloured shirt at the time of the incident, which was recovered by the police the next day. The shirt had got blood stains. He identified the accused before the court.

In the cross examination, he stated that when he reached the site, the accused was lying bleeding. After he reached, Falguni arrived. He had tried to save the deceased. The entire incident lasted for about 15-20 minutes. Even after falling down, he got up and once again he tried to save the deceased. He denied that when he reached the place the accused had already run away.

6. The murder weapon-knife was discovered at the instance of the accused under panchnama Exh. 27. The panch witness Poonambhai Bachubhai Solanki, P.W. 2 was examined at Exh. 26. He was a common witness for the discovery of the

murder weapon as well as for the recovery of the clothes of the accused. As per his deposition and the panchnama Exh. 27, the accused had shown willingness to show the murder weapon where it was hidden. After drawing the preliminary panchnama, the accused, panch witness and the police party proceeded in a police vehicle which was driven as directed by the accused. After they arrived near a canal, the accused took out a knife from behind the trunk of a tree. The blade of the knife had blood stains. The clothes of the accused were recovered under panchnama Exh. 28.

7. The deceased was first treated at Sarasa by Dr. Hiteshbhai Harishchandra Khambholja, P.W. 5 Exh. 35. He had given injury certificate which was produced at Exh. 36.

8. Dr. Hiteshbhai Parshottamdas Vaishnav, P.W. 6, Exh. 38 had carried the postmortem of the deceased. In the postmortem report, Exh. 40, he had recorded following external injuries:

1. About 2.5 x 1 cm sized stab wound present obliquely (with lower end inner side) over right midclavicular region with upper end relatively sharp and lower end relatively blunt. The wound extends in upward backward and outward direction for about 8 cm in subcutaneous plane and comes out as exit wound at tip of right shoulder region as 1 x 0.5 cm sized sharp wound. At the entry wound about 2x1 cm sized abrasion present over inner lower aspect (hit mark).

2. About 3 x 1 x 6 cm sized stab wound present obliquely over front aspect of right upper chest 3 cm below and lateral to injury No. (1) with upper end is outside, upper margin sharp and down margin is curved. The wound is limited upto chest wall & extend in upward backward and inward direction & not entering into chest cavity.

3. About 2.5 x 1 cm sized stab wound present obliquely with upper end inside over front aspect of right down 1/3 of forearm and vertically it extends for about 2 cm in outward and downward direction and comes out as exit wound of size 1x0.7 cm size over outer aspect of down 1/3 of right forearm.

4. In sized wound of size about 1 x 0.5 x 0.3 cm present transversely over palmar aspects of middle phalanx of right index finger.

5. In sized wound of size about 1 x 0.5 x 0.3 cm present transversely over palmar aspects of middle phalanx of right middle fingers.

6. About 2x0.5 cm size stab wound present transversely over right front aspect of abdomen 2 cm right to midline and 10 cm above umbilicus with inner edge relatively curved and outer edge relatively sharp upper margin show abraded area for about 1.2 mm breadth. The wound extend into abdominal cavity breadth. The wound extend into abdominal cavity in backward direction at same level and same line.

7. About 2 x 0.5 x 3 cm size stab wound present transversely in midline about 8

cm above the umbilicus. The wound extend for 3 cm in abdominal wall in outward, downward and slightly backward direction and does not enter into abdominal cavity. Upper margin of wound is relatively curved and lower margin is relatively sharp.

8. About 3x1 cm sized stab wound present transversely over left side front of chest at the level of 4th rib with upper margin show curved area and down margin is relatively sharp. The wound extends into chest cavity in backward direction at same level and same line.

9. About 2x1 cm size stab wound present obliquely with upper and inner side over front aspect of left chest at the level of 3rd rib. 2 cm away from midline upper margin is sharp and lower margin is relatively curved. The wound extends into chest wall for about 3 cm in upward, outward and backward direction and not entering into chest cavity.

10. About 2 x0.5 cm size stab wound present obliquely over posterior border of left axilla about 3 cm in front of left midsapular region upper margin is relatively sharp and lower margin is relatively curved. The wound extends about 3 cm in inward downward and backward direction.

9. Following internal injuries were noted in the postmortem report:

Chest: External injury No. 6 enters chest wall by producing about 1.5 cm sized cut in 4th rib just underneath external injury and produces about 2x0.5 cm transversely sharp cut in pericardium in lower front aspect which extends further and produces about 2x0.5 cm sized transversely sharp cut in upper front aspect of right verticals. Thus approximate depth of wound can be 7 cm.

About 8x6 cm size of right chest wall upper front aspect show soft tissue ecchymosis.

10. In his opinion, the death was due to hemorrhage and shock due to stab injuries over chest and the abdomen.

11. The FSL report at Exh. 65 and serological report at Exh. 66 confirmed presence of human blood of Group O (that belonging to the deceased) on various articles recovered by the Investigating Agency during the course of investigation. It was established that the blood was found from the clothes of the deceased, the clothes of the accused, the clothes of the witness Pravinbhai, P.W. 4 as also the murder weapon-knife. The blood matched with the blood group of the deceased.

12. Nileshkumar Vitthalbhai Patel, P.W. 13, Exh. 61 the Investigating Officer gave the detailed steps undertaken during the course of the investigation.

13. From the evidence on record, it clearly emerges that deceased Balvant died due to multiple stab injuries received by him in the evening on 06.02.2007. The incident was closely witnessed by Pravinbhai Somabhai Chauhan, P.W. 4, Exh. 34. He was returning after having an omelet at a stall in the village. At that time,

he saw Balvant proceeding on a bicycle coming from his home. Accused Suresh dragged the bicycle and started giving knife blows to him. This witness described the assault by accused Suresh and his companion Dholo. In particular, Suresh was carrying a knife with which he gave multiple blows to the deceased. This witness tried to save Balvant. He, however failed in his attempt. He was pushed aside and he fell down on the ground. In the process his clothes also got blood. Apart from the deposition his presence was duly established through the blood stains on the T-Shirt recovered by the Investigating Agency. Serological report confirms presence of human blood of Group O.

14. Additionally, the incident was also witnessed by Falguni the first informant, P.W. 3 Exh. 32. She was at home on the date of the incident. She was about to leave preparing alongwith other family members to visit her matrimonial uncle, who had met with an accident. At that time, her cousin brother rushed home to inform that the deceased was being assaulted by Suresh. She, therefore, rushed to see what was happening. The assault was taking place at the end of lane from her house situated barely couple of 100 ft away. She saw that Suresh was giving repeated knife blows to the deceased on vital parts of the body. She has also given her narration in her deposition and further stated that soon after she reached, the other family members also arrived, upon which the accused ran away.

15. In addition to such reliable eyewitness accounts, we also have other corroborative evidence on record. Dr. Hiteshbhai Parshottamdas Vaishnav, P.W. 6, Exh. 38 had carried out the postmortem and noticed as many as 10 serious stab injuries on various parts of the body. In his postmortem report, in addition to giving the details of external as well as internal injuries on the body, he had specified that the death occurred between 9.00 and 10.00 pm on 06.02.2007. This closely corresponds with the time of the incident given by the witnesses. In the opinion of the doctor, the injuries were serious and sufficient in ordinary course of nature to cause death. In fact, in the cross examination, he clarified that any person receiving such injuries had little chance of survival.

16. The murder weapon was discovered at the instance of the accused. Though vehemently denied by the counsel for the appellant, we have no difficulty in accepting such discovery. The panch witness to the discovery panchnama supported the prosecution. The panchnama also records the manner in which the accused led the police party and the panch-witness to where the murder weapon was hidden behind the trunk of a tree at an isolated spot.

17. The murder weapon, when sent for FSL report, confirmed presence of human blood. Not only the knife, various other articles recovered during the course of the investigation, such as the shirt of the witness, the clothes of the deceased, those of the accused confirmed presence of blood of Group O. On the record it has also come that the clothes worn by the deceased had cut marks corresponding to the stab injuries received by him.

18. Under the circumstances, in our opinion there was overwhelming evidence confirming the involvement of the accused in causing serious and multiple injuries with knife on the deceased which ultimately led to his death.

19. Learned counsel for the appellant however, vehemently contended that neither the first informant Falguni, P.W. 3 nor Pravinbhai, P.W. 4 could be the eyewitness. He harped on a statement by Pravinbhai in the cross-examination where he agreed to the suggestion that when he reached the site of the incident, the accused was lying profusely bleeding. The witness further stated that after he reached the spot, P.W. 3 arrived. In our opinion, however, these statements cannot be seen in isolation and the deposition by this witness must be appreciated in its entirety. This witness has been saying from outset that he rushed to save Balvant from assault and that is how his Shirt got blood stains. In his deposition, he had stated that when he was returning from the village after having an omelet, he saw Balvant proceeding on a bicycle. Suresh dragged him and started giving knife blows. His statement, that when he reached the spot Balvant was lying bleeding, therefore must be appreciated in light of his such deposition. In fact, in the cross examination, he went on to describe how he tried to save Balvant but failed. Merely because he candidly stated that Balvant had already fallen down by the time he reached the spot does not mean that he did not witness the incident or that he arrived at the site long after Balvant was assaulted by someone. Likewise, the statement of this witness, that Falguni arrived after him, also is of not much importance to the defence. In fact, Falguni, herself, has stated that she rushed to the spot upon being informed by her brother that Balvant was being assaulted. According to Pravinbhai, P.W. 4, the incident lasted for about 15-20 minutes. We may recall that the site of the incident was at the end of the lane barely a couple of 100 ft away from the house. If, therefore, Falguni arrived during the course of the assault on the deceased and witnessed the accused stabbing the deceased, the same cannot be discarded as an impossibility.

20. Much was sought to be made by Mr. Barot on the availability of light so as to enable the witnesses to see the incident with any clarity. It was pointed out that the incident took place at about 8 O'clock at night. In absence of any light, the witness could not have seen what might have happened. On the record, however, and in particular, from the deposition of Falguni, it has come on record that there was a street light right next to where the incident took place and that the light bulb was on at that time. Additionally, even if it was the evening time and the incident might have been witnessed by the eyewitness in the street light, we cannot forget the fact that the accused were known to the witnesses. They were residing in the same locality and their identification by the witnesses before the Court, therefore, need not be doubted. There was no reason for the witnesses to falsely implicate the accused. No suggestion or ill will or previous animosity was even made. In particular, Pravin, P.W. 4 was independent witness.

21. Under the circumstances, we do not find the learned Judge committed any

error in convicting and sentencing the accused, particularly, looking to the manner in which the incident took place. The genesis of the incident as also the multiple injuries caused by the accused with a deadly weapon such as a knife on various parts of the body including some of the vital parts, the conviction of he accused for the offence u/s 302 of IPC, in our opinion, needs no interference. In the result, judgment of the Trial Court is confirmed. The appeal is dismissed. R & P to be transmitted to the Trial Court.