

(2009) 03 GUJ CK 0043
In the Gujarat High Court
Case No : Criminal Appeal No. 76 of 2002

Survinbhai Kavarjibhai

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 04-03-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 300, 302

Citation : (2009) 03 GUJ CK 0043

Hon'ble Judges : J.C. Upadhyaya, J;A.L. Dave, J

Bench : Division Bench

Advocate : U.S. Brahmabhatt, for the Appellant; M.R. Mengdey, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

J.C. Upadhyaya, J.—The appellant came to be tried in Sessions Case No. 135 of 2000 by Additional Sessions Judge, Bharuch for the offence punishable u/s 302 of the Indian Penal Code ("IPC", for short). The learned trial Judge, at the end of the trial, recorded conviction of the appellant for the offence punishable u/s 302 of the IPC and awarded life imprisonment and fine of Rs. 1000/-, and in default of payment of fine S.I for one month. The appellant was given benefit of set-off.

2. The prosecution case is that the appellant as well as his younger brother Ravyabhai Kavjibhai and deceased Himaben Ravyabhai were residing jointly in a house situated in Village Rajpara, Taluka Valiya. On 6.3.2000, at about 7 p.m., deceased Himaben was preparing meal. The appellant asked Himaben to serve him meal immediately. Deceased Himaben said that she was preparing meal and the meal would be served. Thereupon, the appellant initially inflicted blow with a wooden log used for the purpose of washing clothes on the head of Himaben and, thereafter, inflicted blow with pestle on the head of Himaben. Himaben succumbed to the injuries. At the time of the incident, Rajkumar Ravyabhai, who is son of deceased Himaben was in the kitchen itself and was taking his meal,

and had seen the commission of the offence. Dineshbhai Motibhai lodged FIR in connection with this incident. The FIR came to be registered by the police and investigation commenced. Statements of material witnesses were recorded. Weapons used in commission of the offence were seized. After collecting relevant material for the purpose of lodgment of chargesheet, the chargesheet came to be filed in the Court of JMFC, Valiya. As the offence was exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Court of Sessions, Bharuch.

3. Charge was framed against the accused at Exh.4 for the offence punishable u/s 302 of the IPC, to which he did not plead guilty and claimed to be tried. Thereupon, the prosecution adduced its oral and documentary evidence. After the completion of the oral evidence, further statement of the appellant came to be recorded u/s 313 of the Cr.P.C. and the appellant in his further statement, denied generally all the allegations levelled against him by the prosecution and stated that his grandfather had executed a will about a agricultural land and to snatch away said land from him, he was impleaded in this case.

4. After evaluating the evidence on record and considering the submissions made on behalf of both the sides, the trial Court recorded conviction of the appellant for the offence punishable u/s 302 of the IPC and awarded the sentence as herein above referred to in this judgment. Hence, the conviction is challenged by the appellant in this appeal.

5. Learned advocate Mr. U.S. Brahmbhatt for the appellant submitted that the entire case rests upon the evidence of a child witness - Rajkumar Ravyabhai, who is the son of the deceased. He is a tutored child witness. However, even otherwise, considering the evidence of Rajkumar, it is untrustworthy and does not inspire any confidence, so as to connect the appellant with the crime. That except the evidence of child witness Rajkumar, all the other witnesses examined by the prosecution, did not support the case of the prosecution. Alternatively, it is submitted that the incident occurred because of provocation provided by the deceased to the appellant and, therefore, the trial Court erred in recording conviction of the appellant for the offence of murder. Therefore, it is submitted that the appeal may be allowed.

6. Learned APP Mr. Mengdey for the State vehemently opposed this appeal.

7. We have examined the record and proceedings in context with the submissions made on behalf of both the sides.

8. Considering the evidence adduced by the prosecution in this case, it transpires that at the time of the incident, the appellant and his elder brother Ravyabhai and his brother Ravyabhai's wife Himaben (the deceased) were residing in the same house. About the inter se relationship between the accused and the deceased, there is no dispute. It further transpires that the entire case depends upon the evidence of child witness Rajkumar Ravyabhai (PW-4), examined at Exh.9.

9. Considering the evidence of child witness Rajkumar, he stated that the accused and his father Ravyabhai and his mother Himaben were residing jointly. He stated that the accused inflicted blow of wooden log, generally used for the purpose of washing clothes, on the head of his mother, while his mother was preparing food in the kitchen. He stated that thereafter accused inflicted blows with pestle on her head. At that time, he was in the kitchen and was taking his meal. His mother died. He immediately left the house and went to the house of his uncle Dineshbhai and informed Dineshbhai about the incident. He identified both the weapons during the course of his evidence. He stated that at the time of the incident, his father Ravyabhai was not in the house, but had gone for labour-work and when his father returned, he narrated the incident to his father. Considering the cross-examination of this witness, nothing emerges, which would be favourable to the accused. Suggestion was put that there was dispute between his parents, and his father caused injuries to his mother, which was emphatically denied by him. No effective cross-examination appears to have been made, so far as the actual incident is concerned. Nothing appears that whatever is deposed by child witness Rajkumar, is unnatural or that he is a tutored child witness.

10. The prosecution examined first informant Dineshbhai Motibhai at Exh.6 and according to his evidence, he was at his home, round about 7 p.m., on the day of the incident, his nephew Rajubhai came to his house and informed that the accused had caused injuries to the deceased. Thereupon, he lodged the FIR. Prosecution examined other neighbours in this case, but, considering their evidence, they did not support the case of the prosecution.

10.1 Weapons were seized by the police by drawing required panchnamas. The weapons were forwarded to FSL for the purpose of examination and considering the FSL report, Exh.38, it appears that the blood group of the deceased was Group "A" and the weapons as well as the shirt of the appellant had blood stains of the group of the deceased i.e. Group "A".

11. Considering the medical evidence on record, the prosecution examined Dr. Bipinkumar Ramnandan at Exh.11, who performed the postmortem and the PM report is produced at Exh.13. Considering the medical evidence, it clearly transpires that serious injuries like CLW wound were caused on the vital part of the body like the head and the corresponding internal injuries were seen by the Doctor, which caused damage to the brain of the deceased and according to the Medical Officer, the cause of death was shock due to head injury. Under such circumstances, the prosecution successfully proved the homicidal death of the deceased.

12. Considering the overall evidence on record, the prosecution successfully proved the involvement of the the appellant in this offence. There is no reason to discard the evidence of child witness Rajkumar Ravyabhai. Alternative submission is made by the learned advocate Mr. Brahmbhatt that the provocation was provided by the deceased to the appellant and in a heat of passion, the

incident occurred, cannot be accepted for the reason that considering the evidence of Rajkumar, there is nothing that at the time of the incident, any quarrel took place between the appellant and the deceased. On the contrary, Rajkumar says that at the time of the incident, his deceased mother had kept silent. Even in the further statement recorded u/s 313 of the Cr.P.C., the accused did not raise any such defence. On the contrary, the defence of the appellant - accused appears to be of total denial. Even otherwise, considering the evidence on record, nothing emerges, which would attract any of the Exception attached to Section 300 of the IPC.

13. In light of the entire above discussion, we are of the considered opinion that the appeal deserves dismissal.

14. The appeal stands dismissed.