
(2008) 07 GUJ CK 0006
In the Gujarat High Court
Case No : Criminal Appeal No. 382 of 2000

Takhu Bhaya Sankhi

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 25-07-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374
Penal Code, 1860 (IPC) — Section 302, 504

Citation : (2008) 07 GUJ CK 0006

Hon'ble Judges : Z.K. Saiyed, J;A.M. Kapadia, J

Bench : Division Bench

Advocate : Chirag M. Pawar, for the Appellant; Public Prosecutor for Opponent 1, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Kapadia, J.—Challenge in this Appeal u/s 374 of the Code of Criminal Procedure ("the Code" for short) is to the correctness of the judgment and order dated 18.3.2000 rendered in Sessions Case No. 64 of 1996 by the learned Sessions Judge, Amreli, by which the sole Appellant ("the Accused" for short) has been convicted for commission of the offence punishable under Sections 302 and 504 of the Indian Penal Code ("IPC" for short) and sentenced to suffer imprisonment of life for the offence punishable u/s 302 IPC. No separate sentence is imposed for the offence punishable u/s 504 IPC.

2. The prosecution case as disclosed from FIR and unfolded during trial is as under:

2.1 As per the prosecution case PW-5 Khodabhai Jivabhai Mala has filed a complaint before PW-9 Bhikhubhai Govindbhai Rabari, Incharge Police Officer, Amreli Police Station, wherein, inter alia it is alleged that;

His name is Khodabhai Jivabhai Mala and he is Kathi Darbar by caste. He is aged about 70 years and is maintaining himself by doing agriculture work and is

residing at Kerianagas Taluka District Amreli. He has two sons named Selarbhai and Anakbhai. Both of them are married. His daughter named Ayaben is married to Takhubhai Bhayabhai Khumar. His daughter and son-in-law are residing separately at village Keriyanagas for the last twenty years. He was working as a fitter in Railways at Bhavnagar where his both sons were living with him. His son-in-law Takhubhai Bhayabhai was doing cultivation in his 14 bigha land at village Kariyanagas and was entirely managing the agriculture affairs. He was residing at Bhavnagar after his retirement from Railways in the year 1986. His son Anakbhai with his family was residing at village Kariyanagas for the last two years. His wife Sonbai is staying with his eldest son at Bhavnagar. He has taken over the entire management of his agriculture affairs from his son-in-law. He took up the agriculture produce for which his son-in-law was displeased and was altercationing with him off and on. His intention was to harass us so that we may go away and thereby to usurp the land. Therefore, he was quarreling with my family off and on. As he was his son-in-law, he did not lodge any police complaint. The house of his son-in-law is adjoining to his house. The compound wall has broken. He has further inter alia testified that he lent Rs. 6000/- to his son-in-law Takhubhai for purchasing rickshaw before 15 years. He has repaid Rs. 3000/-. For the remaining amount of Rs. 3000/- his son-Anak's wife Nanda demanded the same due to which there was exchange of words with Hansa-Aikhaben's daughter and there was a quarrel. As per the further case of the complainant it was about 5 O' clock in the evening when he was tying his cattle. At that time his son-in-law uttered abusive language and rushed with a knife in hand to beat Nanda. He intervened with folded hands. He then threw away the knife. At that time Nandaben was very much frightened. His son Anak was with his elder brother Lakhubhai in the village. So Nandaben went out of his house for calling Anak. His son-in-law took out scythe from manger and rushed behind Nandaben by uttering abuses. While passing, he threw Nanda in his compound, he gave a scythe blow on the head of Nandaben. So Nandaben fell down and scythe blows one after the other were given on Nandaben. There was much bleeding from the head, back and waist portion of Nandaben. At that time Hansaben also arrived by rushing there and was requesting Takhubhai by saying "Bapu please leave this" and took him to her house. Thereafter he went to the house of his elder brother Lakhubhai. As Anak was there, he informed him about the incident. Both of them came immediately. The incident was also conveyed to one Chaganbhai Madhubhai Thakore who was passing by for calling a rickshaw for going to hospital. Chaganbhai stayed with him. Lakhubhai brought the rickshaw of one Mahipatsingh Jepalsingh Thakore of his village. At that time Nandaben was not speaking anything. He, his elder brother Lakhubhai and his son Anak took Nandaben to hospital where the Doctor examined and declared Nandaben "dead" and informed that PM is required to be done. Thus, deceased Nandaben, on demanding Rs. 3000/- within the knowledge of Hansaben, had exchange of words for which his son-in-law Takhubhai got excited and gave scythe blows on the head, back and leg of Nandaben and thereby caused her death. The said complaint is on record at Exh.15.

2.2 The aforesaid complaint is registered vide CR No. I 112/1996 at Amreli Police Station for commission of the offence punishable u/s 302 IPC against the Accused. Pursuant to the registration of the complaint, investigation was started. During the course of investigation PW-9 Bhikhubhai Govindbhai Rabari held inquest on the dead body of the deceased and sent the same for PM. He, thereafter drawn the panchnama of the scene of offence and recorded the statement of witnesses. Thereafter, investigation was transferred to PW-10 Keshavlal Premjibhai Gajipara. After taking over investigation by him, he came to know about the whereabouts of the Accused. He, therefore, arrested the Accused. As the Accused showed his willingness to show the weapon scythe used for commission of the offence, he draw the discovery panchnama in presence of the panchas and recovered the weapon scythe. He has also recovered the clothes worn by the Accused and then sent the said mudamal to FSL for chemical analysis.

2.3 On receipt of the autopsy report as well as FSL report, and as the sufficient incriminating evidence was found against the Accused for commission of the offence punishable under Sections 302 and 504 IPC, he filed charge sheet against the Accused in the Court of learned Chief Judicial Magistrate, Amreli.

2.4 As the offence u/s 302 IPC is exclusively triable by the Court of Sessions, the learned Chief Judicial Magistrate, Amreli committed the case to the Court of Sessions, Amreli. The learned Sessions Judge, Amreli, framed charge against the Accused for commission of the offence punishable under Sections 302 and 504 IPC.

2.5 The charge was read over and explained to the Accused. The Accused pleaded not guilty to the charge and claimed to be tried. Therefore, he was put to trial by the learned Sessions Judge in Sessions Case No. 64 of 1996.

2.6 In order to bring home the charge leveled against the Accused, the prosecution has examined in all 10 witnesses and also produced 13 documents, details of which have been narrated in paragraph 4 of the impugned judgment and order.

2.7 After recording of evidence of the prosecution witnesses was over, the trial Court explained to the Accused, the circumstances appearing against him and recorded his further statement u/s 313 of the Code. In his further statement, the Accused denied the case of the prosecution in its entirety. He has stated that a false case has been filed against him on account of the land dispute. However, he has neither led any evidence nor examined any witness in support of his defence.

2.8 On appreciation, evaluation, analysis and scrutiny of the evidence on record, the trial Court came to the conclusion that the deceased Nanda had died a homicidal death and the Accused is the author of the injuries caused to the deceased with scythe. The prosecution therefore successfully established the complicity of the Accused for the offence of murder.

2.9 On the aforesaid finding, the trial Court has convicted the Accused for commission of the offence punishable under Sections 302 and 504 IPC and sentenced to suffer imprisonment for life for the offence punishable u/s 302 IPC and no separate sentence is imposed u/s 504 IPC, giving rise to instant Appeal at the instance of Accused, which he has filed through jail.

3. Mr. Chirag Pawar, learned advocate of the Accused, who has appeared by way of legal aid, has contended that the Accused has been falsely roped in the offence of murder of deceased Nanda. There was no reason for the Accused to commit murder of his near and dear relative. He has also submitted that the deceased and the Accused are relatives and therefore, it cannot be believed that the Accused has committed murder of Nanda. He, therefore, urged that the Appeal filed by the Accused deserves to be allowed by quashing and setting aside the judgment and order of conviction and sentence and thereby acquitting the Accused of the offence with which he was charged. He, therefore, urged to allow this Appeal

4. Per contra Mr. Mukesh Patel, Ld. Assistant Public Prosecutor for the Respondent State of Gujarat has submitted that there is no infirmity or illegality committed by the trial Court in recording the conviction and sentence against the Accused. Therefore, no interference is called for in the impugned judgment and order. He, therefore, urged to dismiss the Appeal by confirming the judgment and order of conviction and sentence recorded against the Accused by the trial Court.

5. This Court has considered the submissions advanced by the learned advocates appearing for the parties and perused the impugned judgment and order. This Court has undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record, which is read and re-read by the learned advocates of the parties with reference to broad and reasonable probabilities of the case. This Court has examined the entire evidence on record for itself independently of the learned Judge of the trial Court and considered the arguments advanced on behalf of the Accused and infirmities pressed, scrupulously with a view to find out as to whether the trial Court has rightly recorded the order of conviction and sentence.

6. There is no dispute to the fact that the deceased had died a homicidal death. To prove this fact, prosecution has examined and relied upon the oral testimony of PW-7 Dr. S.M. Siddhpura at Exh.18, who has performed the PM on the dead body of the deceased and prepared the PM report, which is on record at Exh.19.

7. On conjoint reading of the oral testimony of PW-7 Dr. S.M. Siddhpura at Exh.18 and PM report at Exh.19, it is seen that the deceased had died because of shock due to massive hemorrhage and injuries to brain and lungs. We are, therefore, of the opinion that the trial Court has rightly held that the deceased had died a homicidal death and therefore, we confirm the said finding and hold that the deceased had died a homicidal death.

8. Now the next question would be whether the Accused is the author of the injuries caused to the deceased. In this connection, the prosecution has relied upon the oral testimony of star sole eye witness PW-5-Khodabhai Jivabhai Mala at Exh.14, who has inter alia testified as per the narration made in the complaint at Exh.15. So far as the relevant evidence is concerned, it is testified by him that he has taken over the entire management of his agriculture affairs from his son-in-law. He took up the agriculture produce for which his son-in-law was displeased and was altercating with him off and on. His intention was to harass him and his wife so that he may go away and thereby to usurp the land. Therefore, he was quarreling with his family off and on. As he was his son-in-law, he did not lodge any police complaint. The house of his son-in-law is adjoining to his house. The compound wall has broken. He has further inter alia testified that he lent Rs. 6000/- to his son-in-law Takhubhai for purchasing rickshaw before 15 years. He has repaid Rs. 3000/-. For the remaining amount of Rs. 3000/- his son-Anak's wife Nanda demanded the same due to which there was exchange of words with Hansa-Aikhaben's daughter and there was a quarrel. He has testified that it was about 5 O' clock in the evening when he was tieing his cattle. At that time his son-in-law uttered abusive language and rushed with a knife in hand to beat Nanda. He intervened with folded hands. He then threw away the knife. At that time Nandaben was very much frightened. His son Anak was with his elder brother Lakhubhai in the village. So Nandaben went out of his house for calling Anak. His son-in-law took out scythe from manger and rushed behind Nandaben by uttering abuses. While passing, he threw Nanda in his compound, he gave a scythe blow on the head of Nandaben. So Nandaben fell down and scythe blows one after the other were given on Nandaben. There was much bleeding from the head, back and waist portion of Nandaben. At that time Hansaben also arrived by rushing there and was requesting Takhubhai by saying "Bapu please leave this" and took him to her house. Thereafter he went to the house of his elder brother Lakhubhai. As Anak was there, he informed him about the incident. Both of them came immediately. The incident was also conveyed to one Chaganbhai Madhubhai Thakore who was passing by for calling a rickshaw for going to hospital. Chaganbhai stayed with him. Lakhubhai brought the rickshaw of one Mahipatsingh Jepalsingh Thakore of his village. At that time Nandaben was not speaking anything. He, his elder brother Lakhubhai and his son Anak took Nandaben to hospital where the Doctor examined and declared Nandaben "dead" and informed that PM is required to be done. Thus, deceased Nandaben, on demanding Rs. 3000/- within the knowledge of Hansaben, had exchange of words for which his son-in-law Takhubhai got excited and gave scythe blows on the head, back and leg of Nandaben and thereby caused her death.

9. It may be noted that this witness was cross-examined at length by the learned advocate of the defence. However, during the course of cross-examination, nothing substantial has been brought out which would impeach the credibility of his evidence. His evidence is trustworthy as there is no reason for this witness to tell a lie against his own son-in-law. It is also required to be noted that the

Accused is the son-in-law whereas the victim is the daughter-in-law. In his presence the incident has taken place.

10. It is also a settled principle of criminal jurisprudence that the evidence of solitary eyewitness is sufficient to base the conviction if his evidence is of sterling quality and unimpeachable. It is also required to be noted that evidence of most of the panch witnesses, including the panch witness of discovery panchnama of weapon have turned hostile, but that pales into insignificance in view of the evidence of the sole eyewitness, who is a near and dear relative of the Accused as well as deceased Nanda and he has no earthly reason to depose against his own son-in-law.

11. In the case of Kunju @ Balachandran Vs. State of Tamil Nadu, the Supreme Court has held that conviction on the basis of the testimony of the sole eyewitness is permissible where the testimony of sole eyewitness was not shaken although he was cross-examined at length and the same was corroborated by the evidence of another witness who did not support the prosecution version in toto.

12. In the case of Krishna Mochi and Others Vs. State of Bihar, the Supreme Court has held that credible evidence of even a solitary witness can form the basis of conviction.

13. Applying the principles laid down by the Supreme Court in above referred to two judgments to the facts of the instant case also, there is a solitary eye witness who is the father-in-law of the Accused as well as the deceased. Therefore, there is no reason to discard the oral testimony of solitary eyewitness. Mr. Chirag Pawar, learned advocate of the Accused is unable to dislodge the findings recorded by the trial Court about the guilt of the Accused.

14. We find ourselves in complete agreement with the finding, ultimate conclusion and the resultant order of conviction and sentence recorded by the trial Court, as according to us, no other finding, conclusion and order, is possible except the one reached by the trial Court, which is required to be affirmed by us.

15. Seen in the above context, there is no reason or justifiable ground to interfere with the impugned judgment and order of conviction and sentence passed by the trial Court, and as the Appeal lacks merit, deserves to be dismissed by confirming the judgment and order passed by the trial Court.

16. For the foregoing reasons, the Appeal fails and accordingly it is dismissed. Resultantly the judgment and order of conviction and sentence dated 18.3.2000 rendered in Sessions Case No. 64 of 1996 by the learned Sessions Judge, Amreli, is hereby confirmed and maintained.