

(2014) 03 GUJ CK 0082
In the Gujarat High Court

Case No : Criminal Appeal No. 544 of 2010 and 18 of 2012

Thakor Gandaji Jawanji

APPELLANT

Vs

State of Gujarat and 1 Another

RESPONDENT

Date of Decision : 07-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 114 302 304 323 325

Citation : (2014) 03 GUJ CK 0082

Hon'ble Judges : Z.K. Saiyed, J; Jayant Patel, J

Bench : Division Bench

Advocate : Sadhana Sagar in Criminal Appeal No. 544 of 2010 and Mr. P.H. Buch in Criminal Appeal No. 18 of 2012, for the Appellant; H.L. Jani, APP, for the Respondent

Final Decision : Dismissed

Judgement

Z.K. Saiyed, J.—Appellants are original accused Nos. 1 and 2 in Sessions Case No. 41 of 2009. They were convicted for the offence punishable under Sections 302, 323, 325 and 367 read with Section 114 of the Indian Penal Code by the learned Additional Sessions Judge, Mehsana. u/s 367 read with Section 114 of the Indian Penal Code the accused persons were sentenced to R.I. of 05 years and fine of Rs. 2,500/- each and in default of payment of fine, they were sentenced to S.I. for 01 year. u/s 302 read with Section 114 of the Indian Penal Code, they were sentenced life imprisonment and fine of Rs. 1,000/- and in default of payment of fine, they were sentenced to S.I. of 01 year. No separate sentence was imposed upon them for the offences punishable under Sections 323, 325 read with Section 114 of the Indian Penal Code. The sentence imposed upon the appellants-accused was directed to be undergone simultaneously. The complainant Rajuji Karshanji Thakor is residing with his family at Village: Kuda, taluka: Kharalu, Dist. Mehsana and doing labour work. He is father of two sons and one daughter. On 4.1.2009, the complainant and his friend Dasharathji Laxmanji went to Village: Shahpur and while returning to Kuda Village, Thakor

Gandaji Javanji Talaji, native of Shahpur, who cultivates land of Chaudhary Abhabhai Laljibhai on the outskirts of Unad village and resides in hut in the field, and Thakor Jujarji Parbatji, who also lives on the outskirts of Unad village, came to Kuda village with tractor at about 6:30 p.m. in the evening, and after catching hold of the complainant, they started saying that, he has tried to outrage modesty of their daughter. They made him to sit in the tractor and brought in the outskirts of Unad village, and he was given blows of sticks on the legs and was left there on the road after the assault. Thereafter, as 108 mobile van came, he was brought to Vadnagar Government Hospital, where he was admitted in the hospital. During treatments the doctor told that he had fracture on the right leg; injury was also sustained on his left hand.

2. The aforesaid complaint was investigated by the police and charge-sheet was filed against the accused. The charge was framed at Ex. 5. The case was committed to the Sessions Court being Sessions Case No. 41 of 2009. The prosecution in order to prove the guilt of the accused examined 17 witnesses, and the details whereof are recorded by the learned Sessions Judge at para-4 of the impugned judgment. The prosecution also produced documentary evidence of 28 documents, the details of which are mentioned by the learned Sessions Judge at para-4 in the impugned judgment.

3. The learned Sessions Judge, thereafter recorded the statement of the accused u/s 313 of the Criminal Procedure Code wherein the accused denied the evidence against them and in the further statement the accused stated that a false case is filed against them.

4. The prosecution examined various prosecution witnesses, evidence of whom may be summarised thus:-

5. Dr. Mahendrabhai Amrutlal Limbachiya P.W. No. 1 Ex. 9 in his examination-in-chief has deposed that on 4.1.2009 he was performing his duty on that day. At that time, Rajuji Karsanji Thakor, resident of Kuda was brought in 108 Ambulance at 21:30 hours. He had given history that due to assault made he had suffered injuries. He was in conscious condition. This witness has in his evidence narrated the external injuries. He had referred the injured (deceased) to Mehsana Civil Hospital for further treatment.

6. Dr. Prakash Lakshmandas Shah P.W. No. 2 Ex. 11 is the medical expert and he was examined by the prosecution. In his examination-in-chief he has deposed that he had performed postmortem of Rajuji Karsanji Thakor on 5.1.2009. He was medical officer at General Hospital at Mehsana. He performed postmortem on the dead body of the deceased. Various external injuries as narrated " in his evidence. As per the opinion of this witness cause of death of the deceased was shock due to injury to vital organ lung and multiple bones. He has further stated that the injuries of Column Nos. 18 and 20 were sufficient to cause death in ordinary course of nature. He has stated that all injuries could be possible by infliction of stick and club. In his cross-examination nothing adverse has come on

record.

7. Thus, looking to the evidence of this witness, postmortem report as well as cross-examination by the defence, the injuries of the deceased were ante-mortem and the death of the deceased had occurred on account of the injuries caused with weapons like stick and club in ordinary course of nature. Thus the prosecution has proved that death of the deceased was a culpable homicide.

8. Rabari Rameshbhai Shankabhai P.W. No. 4 Ex. 20 in his examination-in-chief has deposed that when he was at his house at quarter past eight at night on 4.1.2009, a phone call of Dr. Mukeshbhai Patel, was received from 108 mobile van on his mobile. He was told by Dr. Mukeshbhai to inform parents of Rajuji Karshanji that he has been admitted in the government hospital at Vадnagar. Therefore, after making a phone, he went to Vадnagar government hospital from Visnagar, where he met Rajuji Karshanji, he was conscious and was able to talk. He has further stated that when he was coming from field towards village, accused persons came there with tractor; when this witness asked Rajuji as to what had happened, Rajuji told him that he was taken away by Gandaji Jawanji and Jujarji in their tractor and was beaten by them with stick and club on account of which he had sustained fracture in the right leg. Rajuji had also sustained contusion in the chest. Thereafter, he was taken to Kuda village by our vehicle. This witness has stated that when he was in Vадnagar hospital, police came to Vадnagar hospital from Valasana Out Post and at that time, Rajuji Karshanji himself dictated a complaint before Valasana Police.

9. Dashrathji Lakshmanji Thakor P.W. No. 5 Ex. 21 is examined by the prosecution and he in his examination-in-chief has deposed that when Rajuji was going towards road outside from his house on foot, at that time, one blue coloured tractor came, Jujarji got down from the tractor outside his house and Rajuji was made to sit in the tractor by lifting. This witness has stated that he can identify the driver of tractor-accused as he saw him at the time of incident. This witness has identified the accused Gandaji Javanji, in the Court that day, who was a driver of tractor at the time of incident. The witness has also identified accused Jujarji before the Court, who had made Rajuji to sit in the tractor by lifting. Thereafter, tractor went towards Nalu village. Thus, this witness has identified the accused persons in the Court during his deposition also.

10. The prosecution has examined Dashrathji Lakshanji Thakor P.W. No. 5 Ex. 21, Lakshmanji Halaji Thajor P.W. No. 7 Ex. 23 and Lavjiji Vishaji Thakor P.W. No. 8 Ex. 24. All the three witnesses were eye witnesses who had witnessed the incident. Looking to their deposition as a whole and complaint of the complainant it becomes clear that both the accused before about eight months had taken away the deceased in blue coloured tractor from Kuda Village at the place of incident and after taking him on the outskirts of Unad Village both the accused had caused injuries to the deceased on his left and right hand and on his legs with stick and club. They have supported the prosecution case.

11. The prosecution has examined Vajuji Chenaji Thakor P.W. No. 11 Ex. 31 who is A.S.I. Looking to his evidence on oath he has stated that he was on duty at the Police Station on 4.1.2009 and P.S.O. Shri Kantilal had given Vardhi that fighting has taken place near the hut of Gandaji Javanji. He has further stated that he had therefore gone there in the vehicle and had taken complaint of Manjulaben, daughter of Gandaji and as he came to know that Rajuji Karshanji has sustained injuries during fighting he is taken to Vadnagar Hospital. He had left for Vadnagar Police Station. He has further stated that in the meantime on receipt of Vardhi through wireless of Vadnagar Police Station he was told to go to Vadnagar Government Hospital and recorded statement of Thakor Rajuji Karshanji. He had gone to the Government Hospital and after inquiring from Rajuji Karshanji had recorded his complaint. He also obtained signature of the doctor to the effect that patient was in conscious condition. This witness has been cross-examined by the defence side. However, in his cross-examination nothing adverse has come out and has supported the prosecution story.

12. The prosecution has examined Manojbhai Khimjibhai Limbat P.W. No. 15 Ex. 44 he was the investigating officer of the offence. He also prepared panchnama of scene of offence as well as panchnama of recovery of weapons which facts are supported by him.

13. This Investigating Officer reached to the Mehsana Civil Hospital and inquest panchnama of the deceased Rajuji Karshanji Thakor was carried out and yadi to the "Executive Magistrate was also given and in his presence inquest panchnama was drawn and for postmortem he has prepared I form. The postmortem was carried out by doctor and he has obtained certificate of cause of death from the doctor and performed postmortem. The FSL expert was also called by this witness at the place of offence and then in presence of the FSL expert two panchas were called and panchnama was drawn and in the said connection other offence u/s 354 of Indian Penal Code was also registered by the complainant Manjulaben d/o. Gandabhai as CR No. I-3/2009 that place was shown by Manjulaben and statement of the witnesses are recorded on 6.1.2009. The accused were arrested by this witness. On the death of deceased Sections 302 and 367 were added. Thereafter muddamal weapons were discovered at the instance of the accused in terms of panchnama. Pant of the deceased was also recovered. As the present Investigating Officer was transferred, second Investigating Officer Shri J.T. Rana took over the further investigation and filed charge-sheet.

14. Heard Ms. Sadhna Sagar, learned counsel for the appellant in Criminal Appeal No. 544 of 2010. She has submitted that prosecution has not proved the case beyond reasonable doubt. She has read the contents of the complaint and contended that contents of the FIR are totally contradictory and the injuries are not described in the complaint. She has further contended that as per the evidence of the prosecution witnesses, injuries sustained by the deceased were not fatal injuries and were simple in nature. She has further read the evidence of

the witnesses and contended that from the evidence of the witnesses it is prima facie established that without knowledge and intention, the present appellant has committed the said offence.

15. Mr. P.H. Buch, learned counsel for the appellant in Criminal Appeal No. 18 of 2012 has contended that the prosecution has failed to prove that present appellant has committed murder with full knowledge and intention to kill the deceased. He has supported arguments of Ms. Sadhna Sagar and contended that as per the evidence of the P.W. Nos. 1 and 2 defence has established its case beyond reasonable doubt and has also proved that this is not a case of Section 302 of Indian Penal Code and therefore, benefit of doubt requires to be given to the present appellant. He has further read evidence of the P.W. No. 5 and contended that the learned Judge has wrongly considered that both the appellants have committed alleged offence with knowledge and intention and it is proved by prosecution beyond reasonable doubt. It is, therefore, submitted that the judgment and order of the learned Judge deserves to be quashed and set aside and case of the appellants does not fall u/s 302 of the Indian Penal Code, but it falls u/s 304 Part-II of the Indian Penal Code.

16. Heard Mr. H.L. Jani, learned APP. He has read the charge, evidence of the prosecution and contended that initially the complaint was registered and later on during the treatment, and as a result of injuries caused on the deceased, he expired and therefore, Section 302 and other sections were added. He has further contended that as per expert opinion P.W. Nos. 1 and 2, 51 injuries were found by doctor P.W. No. 2 and as per evidence of this expert opinion it is prima facie established that in result of the said injury caused by the present appellants deceased Rajuji Karshanji Thakor expired. He has further contended that size of the injuries and vital part shows that there was intention of present appellants to commit serious offence and with a intention and knowledge blows were given to the deceased. He has further read the evidence of the Investigating Officer who has registered complaint of the deceased Rajuji Karshanji Thakor. He has further contended that as per the contents of the complaint it was written by public servant and even through cross-examination also defence has not tried to establish that there was some animosity. He has contended that the said complaint is a dying declaration made before the public servant and he has further drawn attention to the cross-examination of this witness and contended that defence has not carried out any proper defence to establish that the said dying declaration in complaint is not trustworthy, reliable and acceptable. He has read evidence of the medical expert P.W. No. 1 who has given initial treatment to the deceased and also read evidence of the witnesses through whom prosecution has established that at the place of first incident from which place deceased was taken away by the appellants in tractor is proved beyond reasonable doubt. He has further contended that the appellants were last seen together with the deceased is also proved. He has read contents of the panchnama and scene of offence as well as contents of discovery panchnama and contended that as per the opinion of medical expert it is proved beyond reasonable doubt that the

injuries shown in the postmortem are possible with the said muddamal articles. He has read inquest panchnama and also read contents of the postmortem note and contended that prosecution has prima facie proved injuries of the deceased through both the said documents. He has read contents of the inquest panchnama Ex. 29 and contended that part of the deceased was removed by present appellants and inquest panchnama indicated that he was only in nicker. In support of said contents of panchnama of discovery he has further contended that same can happen only when forcefully part was removed from the body of the deceased. He has read judgment of the trial Court and contended that learned Judge has rightly considered oral evidence of the witnesses and documents produced before him. He has contended that as per the learned counsel for the appellants there was no intention and knowledge of the present appellants, but looking to the injuries caused to the deceased, intention and knowledge of the present appellants to commit murder of the deceased is proved.

17. We have heard the learned counsel for the respective parties and perused the papers produced before us. We have also considered the submissions advanced by the learned counsel for the rival parties. We have gone through the impugned judgment and order passed by the learned Judge and oral as well as documentary evidence produced on the record.

18. We have gone through the oral evidence of the prosecution witnesses-complainant and other witnesses and also perused the charge framed against the appellant-accused. The contents of the place of panchnama, inquest panchnama, discovery panchnama and deposition of the eyewitnesses are proved beyond reasonable doubt. We have also carefully gone through the oral as well as documentary evidence of the medical experts who are totally independent witnesses. We have found that deceased Rajuji in his complaint explained the incident in clear manner before A.S.I. P.W. No. 11 and also the act of the present appellants on account of which he sustained such injuries. As per the evidence star witness A.S.I. P.W. No. 11 he has proved that said complaint Ex. 32 is taken by him. We have minutely perused the evidence and the statement made by the deceased before the Investigating Officer. It appears that the contents of the complaint are trustworthy, reliable and acceptable. We have further perused the oral evidence of [the prosecution witnesses. As per their evidence they have supported the prosecution case fully and proved the presence of the appellants accused at the first place from where deceased was taken away. Eyewitness Dashrathji P.W. No. 5 is a star witness of the prosecution case and as per his evidence, the said incident occurred in his presence.

19. We have further considered circumstantial evidence produced on record, as well as serological report from which blood of the deceased was found from the muddamal article. The learned counsel for the appellants have contended regarding knowledge and intention of the appellants to cause the injuries to the deceased. It is required to be noted that, "knowledge" is an awareness on the part of the person concerned indicating his state of mind. "Reason to believe" is

another facet of the state of mind. "Reason to believe" is not the same thing as "suspicion" or "doubt" and mere seeing also cannot be equated to believing. "Reason to believe" is a higher level of state of mind. Likewise "knowledge" will be slightly on higher place than "reason to believe". A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to believe if he has sufficient cause to believe the same. A person must have reason to believe if the circumstances are such that a reasonable man would, by probable reasoning, conclude or infer regarding the nature of the thing concerned. Such circumstances need not necessarily be capable of absolute conviction or inference; but it is sufficient if the circumstances are such creating a cause to believe by chain of probable reasoning leading to the conclusion or inference about the nature of the thing. These two requirements which we have considered from the evidence of the prosecution case. From the medical evidence and injuries narrated by the doctor in P.M. Note, it prima facie appears that act of the accused was premeditated and the appellants had an intention to commit murder of the deceased. It is true that intention to commit murder can be inferred from the nature and number of injuries which are proved through oral evidence of the doctor P.W. No. 2 and P.M. Note also. From the P.M. Note Ex. 12 it is prima facie established that total 51 injuries were found on the body of the deceased from which the doctor opined that injuries were sufficient in the ordinary course of nature to cause death and through the said evidence, intention to commit murder of the deceased by the present appellants is prima facie established. Therefore, we are of the opinion that evidence of the prosecution witness clearly shows that the accused - appellants intended to kill the deceased. Having regard to the facts of the case of the prosecution, we do not find anything to show that there was no intention and knowledge of the present appellants accused to commit murder of the deceased. We are, thus, in full agreement with the findings recorded by the learned Sessions Judge and therefore, dismiss both the appeals by confirming the judgment of conviction and sentence passed by the learned Sessions Judge. Both appeals shall stand dismissed accordingly.