
(2016) 01 GUJ CK 0050
In the Gujarat High Court
Case No : Criminal Appeal No. 1216 of 2008

Thakor Halaji Nagjiji

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 07-01-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2016) 3 Crimes 412

Hon'ble Judges : K.S. Jhaveri and R.P. Dholaria, JJ.

Bench : Division Bench

Advocate : Mr. F.B. Brahmbhatt, Advocate, for the Appellant; Mr. L.R. Pujari, APP, for the Respondent

Final Decision : Dismissed

Judgement

Mr. K.S. Jhaveri, J.(Oral)—Present appeal, under Section 374 of the Code of Criminal Procedure, 1973 ((for brevity, "the Code"), filed by the appellant - original accused, is directed against the judgment and order dated 30/01/2008 passed by the learned Additional Sessions Judge, Fast Track Court No. 2, Mahesana in Sessions Case No. 84 of 2007, whereby, the learned trial Judge was pleased to convict the appellant herein - original accused for the offence punishable under Sections 302 of the Indian Penal Code, 1860 (for brevity, "the IPC") and sentenced him to life imprisonment and a fine of Rs. 1,000/and in default of payment of fine, to undergo simple imprisonment for fifteen days.

2. Brief facts of the case of complainant - Amratji was such that he resided at village: Rajipura, taluka: Satlasana. He was having three brothers and four sisters out of which, one sister namely Savitaben had married to one Thakore Sovanji Babaji at village: Tarabh and in progeny, they had three sons and four daughters amongst whom, deceased Shankerji was the eldest one. It was further the case of the complainant that on 07/10/2006, he had received a telephonic information from his brother-in-law namely Rabhuji Keshaji about the death of his nephew - Shankerji and when he rushed to village: Tarabh and inquired about

the same, it had come to know that after going out on 05/10/2006 at 12:00 at noon, his nephew - deceased Shankerji had not returned. It had further come to know that deceased - Shankerji had illicit relations with the wife of the accused - Thakore Halaji Nagjiji and the accused had a suspicion of the same and keeping grudge of the same, he killed Shankerji by drowning him in the lake. One Lakhiben Mafaji also informed them that on 05/10/2006, she had seen the accused and the deceased fighting near the lake. Accordingly, on the said backdrop, a complaint came to be lodged against the accused for the offence punishable under Sections 302 of the IPC on 03/06/2007.

2.1 Pursuant to the complaint, investigation was carried out. After investigation, charge-sheet was filed and as the case was triable by the Court of Sessions, it was committed to the Sessions Court at Mahesana.

2.2 The trial Court framed charge against the accused. The accused pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution produced oral as well as documentary evidence.

2.3 In order to bring home the charge against the accused, the prosecution has examined following witnesses and also produced several documentary evidence, as under:

Oral Evidence

S/n.

Name of Witness

Exh.

1

Dr. Vinodchandra Jethalal Parmar, MO

6

2

Amratji Keshaji Thakore, complainant

9

3

Lakhiben Mafaji Thakore

12

4

Dhulaji Ganeshji Thakore

13

5

Sartanji Fulaji Thakore

15

6

Lavjiji Motiji Thakore

18

7

Devaji Sovanji Thakore

19

8

Maganbhai Malabhai Desai, PSO

22

9

Doljibhai Savjibhai Ansari, IO

25

10

Ramjibhai Prabhudas Chaudhary, IO

27

Documentary Evidence

S/n.

Document

Exh.

1

PM Report

7

2

Death Certificate

8

3

Inquest Panchnama

14

4

Panchnama of place of offence

16

5

Panchnama of clothes of the deceased

17

6

Accident Death No. 32/06 of Visnagar Police Station

20

7

Complaint given by Thakore Amratji Keshaji

23

8

Depute order

24

9

Accident Death No. 32/06, application as per Section 174 of CrPC

26

10

Office copy of despatch of muddamal

28

11

Letter to FSL

29

12

Letter to FSL

30

13

FSL Report

2.4 At the end of the trial, Further Statement of the accused under Section 313 of Code was recorded in which he pleaded not guilty and false implication. Thus, after recording above referred Further Statement and hearing the arguments on behalf of prosecution and the defence, the learned Sessions Judge convicted the present appellant - original accused as aforesaid by the impugned judgment and order.

2.5 Being aggrieved and dissatisfied with the aforesaid judgment and order passed by the Sessions Court, the appellant - original accused has preferred the present appeal against conviction.

3. We have heard Mr. F.B. Brahmbhatt, learned advocate for the appellant - original accused and Mr. L.R. Pujari, learned Additional Public Prosecutor, for the State.

3.1 Mr. Brahmbhatt, the learned advocate for the accused, took us to the evidence of complainant - Amratji Keshaji Thakore at exh. 9, evidence of Lakhiben Mafaji Thakore at exh. 12, medical evidence and the evidence of other witnesses and contended that, except fact of last seen together, there is nothing on record to establish that the accused was involved in the crime in question. He further contended that the complaint was filed almost after a period more than 14 days and initially an A.D. Complaint for accidental death was registered. Moreover, the learned advocate for the appellant - accused submitted that the wife of the deceased has admitted that she had no knowledge about the said illicit relations between the deceased and the wife of the accused. He also contended that the prosecution has miserably failed to prove the case against the present appellant and the appellant is wrongly roped in the crime in question and hence, he is required to be acquitted and eventually, he requested to allow the present appeal against conviction. In support of his submission, he relied upon following decisions of the Hon"ble Apex Court:

3.1.1 *Kanhaiyalal v. State of Rajasthan*, reported in (2014) 4 SCC 715, para 12 of the same, which is extracted hereunder:

"The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant."

3.1.2 *Arjun Marik and others v. State of Bihar*, reported in 1994 Supp (2) SCC 372, Head Notes "G" and "H", which are extracted hereunder:

"G. Criminal Trial - Circumstantial evidence - Motive - When assumes importance - Absence of proof of motive not material if involvement of the accused in crime is otherwise established - However, when prosecution case is solely based on circumstantial evidence motive assumes importance - On facts, motive not

established."

H. Criminal Trial - Circumstantial Evidence - Last seen together - Conviction cannot be based on only circumstance of last seen together."

4. Per contra, Mr. Pujari, the learned Additional Public Prosecutor for the State, while supporting the impugned judgment and order, took us to the medical evidence and the evidence of Lakhiben Mafaji Thakore at exh. 12 and also the evidence of complainant Amratji Keshaji Thakore at exh. 9 and to the fact that the present appellant had threatened the brother of the deceased - Devaji Sovanji Thakore, whose deposition is at exh. 19 and in his cross-examination he has admitted the said fact that present appellant had asked him to convey the deceased to stop the illicit relations with his wife else he would kill him, and to the fact that witness - Lakhiben, exh. 12 had lastly seen the duo i.e. the accused and the deceased together, contended that accordingly, the offence is successfully proved against accused beyond reasonable doubt by the prosecution. He, by inviting our attention to the impugned judgment and order, more particularly, para 15 of the same, submitted that when the trial Court has dealt with each and every aspect of the matter minutely, this Court may not interfere in appeal and requested to dismiss the same.

5. We have examined the matter carefully and gone through the evidence on record. We have re-appreciated and reevaluated the evidence on the touchstone of the latest decisions of the Hon'ble Apex Court. Taking into consideration the evidence of PW 1 - Dr. Vinodchandra Jethalal Parmar, Medical Officer, CHC, Siddhpur, exh. 6, it has come on record that no injuries were found on the dead body of the deceased, however, it has also come on record that mud was found in the lungs and the respiratory system of the deceased. Moreover, the cause of death mentioned in the PM Note is, "asphyxia as a result of drowning". No doubt it has come on record, particularly from the medical evidence, that death could be possible if a person does not know swimming, however, taking into consideration the previous conduct of the accused of threatening the family members of the deceased and taking the deceased to the lake, reveals predetermination and desire of living peaceful life sans deceased as the deceased had illicit relations with his wife, we are in agreement with the view taken by the trial Court. Moreover, we find that the trial Court while considering the evidence on record, has very elaborately discussed the evidence adduced before it. Further, the learned advocate for the accused is not in a position to show any evidence to take a contrary view in the matter or that the approach of the Court below is vitiated by some manifest illegality or that the decision is perverse or that the Court below has ignored the material evidence on record. In that view of the matter, we are of the considered opinion that the Court below was completely justified in passing impugned judgment and order and we are in complete agreement with the reasonings given and the findings arrived at by the trial Court and therefore, we are not inclined to disturb the same. We have also gone through the aforesaid decisions relied upon by the learned advocate for the

appellant - accused and in our considered opinion, the same are not of any help to the appellant in the facts and circumstances of the case on hand.

5.1 At his juncture, we are constrained to observe the conduct of the appellant - original accused is required to be viewed very seriously inasmuch as the appellant had earlier moved the Court by an application being Criminal Misc. Application No. 3839 of 2008 praying for suspension of sentence pending appeal. However, by order dated 16/06/2008, the same came to be rejected as not pressed, though, he again filed an application being Criminal Misc. Application No. 15087 of 2008 for the same relief on change of bench and got the bail by order dated 04/02/2009. In our view, this conduct of filing of successive application for bail on change of the bench, is required to be viewed very seriously and required to be deprecated and accordingly we deprecate the same.

6. In view of the aforesaid discussion, present appeal fails and is dismissed accordingly. The impugned judgment and order dated 30/01/2008 passed by the learned Additional Sessions Judge, Fast Track Court No. 2, Mahesana in Sessions Case No. 84 of 2007, is hereby confirmed. The accused is on bail. His bail bonds shall stand cancelled and he is directed to surrender to custody within a period of 10 weeks from today for undergoing the sentence imposed upon him, failing which, the investigating agency shall take necessary actions, in accordance with law. Registry to return the R&P, if called for, to the trial Court forthwith.