
(2011) 03 GUJ CK 0105
In the Gujarat High Court
Case No : Criminal Appeal No. 1190 of 2003

Utambhai Hansaji Nai

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 10-03-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 300, 302, 498A

Citation : (2011) 3 GLR 2091

Hon'ble Judges : R.M. Chhaya, J;A.L. Dave, J

Bench : Division Bench

Advocate : Nisha Parikh, for the Appellant; K.L. Pandya, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Chhaya, J.—This appeal arises out of the judgment and order passed by learned Additional Sessions Judge, Banaskantha at Deesa on 28-5-2003 in Sessions Case No. 130 of 2002, convicting the appellant-accused for the offences punishable under Sections 302 and 498A of the Indian Penal Code, 1860 ("I.P.C." for short) and sentencing, him to suffer rigorous imprisonment for a period of one year and imposing fine of Rs. 500/-, in default, to undergo further rigorous imprisonment for two months for the offence punishable u/s 498A of the I.P.C.- and also further sentencing him to rigorous imprisonment for life for the offence u/s 302 of I.P.C. and imposing a fine of Rs. 2,000/-, in default, to undergo further rigorous imprisonment for one year. The said sentences were ordered to run concurrently.

2. The short facts of the prosecution case are that the present appellant-accused-Utambhai Hansaji Nai ("the accused" for short) and deceased-Amratiben ("the deceased" for short) were husband and wife and they had 15 years of marriage life, out of their wedlock they had four children. The accused, as a husband, used to beat and mentally and physically tortured the deceased, and thereby, used to commit act of cruelty. Because of the said harassment, the deceased left the

house of the accused and came to her parental house and was staying there. Father of the accused had disposed of his field and had deposited an amount of Rs. 50,000/- in the name of the deceased in Post Office and the accused wanted the said amount, therefore time and again, he used to harass the deceased which, in fact, became the reason of the deceased staying away from the accused. It is the case of the prosecution that on 19-4-2002, at about 7-30 p.m., the accused came to the parental house of the deceased at Dhakha and while the deceased was near the courtyard (osari) of the house, the accused assaulted with knife and inflicted a blow upon her, which resulted into injury and at that point of time, aunty of the accused was preparing bread (rotla). The brother of the deceased, Lalitbhai Govabhai Nai (P.W. 5), who was taking rest, on the bed placed in the outer courtyard, heard streaming from the person of the deceased, and hence, P.W. 5 shouted for help, because of which neighbours Lakhmanbhai Hanjaribhai Bhil (P.W. 6), and Hansabhai Vihaji Majirana (P.W. 7), came to the scene of offence and the accused, who was holding knife in his hand was made to sit in the house. Immediately, the victim was removed to Civil Hospital, Dhaka, and thereafter, she was shifted to Palanpur by a jeep. Ultimately she succumbed to the injury received by her because of the aforesaid incident, and that thereby, the accused has committed the offences, as aforesaid.

3. A F.I.R. was lodged alleging the aforesaid offence against the present accused-appellant. On the basis of the F.I.R. above-mentioned, the police started investigation and on completion of investigation, police submitted charge-sheet against the accused-appellant for the offences under Secs. 498A and 302 of I.P.C.

4. Learned Judicial Magistrate, First Class, Dhanera, on receipt of such charge-sheet so submitted by the police, committed the case to the Court of learned Sessions Judge, Banaskantha, as the case was being exclusively triable by the Court of Sessions.

5. The learned Judge, on appearance of the accused-appellant and on perusal of the materials available on record, including the police papers as well as also upon hearing the learned Counsel for the parties, framed charges below Exh. 5 against the accused under Secs. 498A and 302 of I.P.C. The entire charges were read over to the accused-appellant to which he pleaded not guilty and claimed to be tried.

6. The trial Court proceeded with the trial and after considering all evidence led by the prosecution, came to the conclusion that the prosecution has successfully established the charges levelled against the present accused-appellant and specifically believed the case of the prosecution, which is based on chain of circumstances, being complete and uninterrupted. Relying upon the same, the learned trial Judge had reached to the conclusion that the offences alleged in the present case of the I.P.C. were duly established against the accused-appellant, and therefore, had recorded conviction of the accused-appellant, as aforesaid, by the impugned judgment and order dated 28-5-2003. Hence, the present appeal.

7. The prosecution has relied upon oral testimonies of P.W. 4, Lilaben Udabhai Nai (Exh. 21), P.W. 5, Lalitbhai Govabhai Nai (Exh. 23) and also oral testimonies of P.W. 6, Lakhmanbhai Hanjaribhai Bhil, (Exh. 24) and P.W. 7, Hansabhai Vihaji Majirana (Exh. 26). Out of which, P.W. 4 and P.W. 5 were eye-witnesses and P.W. 6 and P.W. 7 were immediately reached the scene of offence. The prosecution has also examined P.W. 3, Narsinhbhai Dhamaji Nai, (Exh. 19), who is father of the accused.

7.1. The prosecution has also examined P.W. 1, Dr. Babulal Bechardas Sutaria (Exh. 9), who performed autopsy of the deceased and P.W. 2, Dr. Kishorbhai Shambhubhai Thakkar, (Exh. 15), who treated the deceased, and has also relied upon the relevant documentary evidence, more particularly the serological report of Forensic Science Laboratory (F.S.L.). The prosecution has also examined P.W. 16, Bhailalbhai Jagjivanbhai Patel, Investigating Officer, (Exh. 57) as well as P.W. 15-Jayantilal Amratlal Joshi (Exh. 50), who has registered the F.I.R., and other relevant documentary evidence.

8. Heard Ms. Nisha Parikh, learned Advocate appearing on behalf of the accused-appellant, while the respondent-State has been represented by the learned A.P.P. Mr. K. L. Pandya.

9. Learned Advocate Ms. Parikh has assailed the impugned judgment and has pointed out that the ocular evidence of eye-witnesses is not believable and that, in a way, as per the prosecution, neither P.W. 4 nor P.W. 5 were the eye-witnesses. It was further pointed out that the alleged incident has occurred at 7-30 p.m., and therefore, it is not believable that the witnesses have seen the occurrence of the alleged incident, and therefore, their oral testimonies are not believable. She has further submitted that the prosecution has not been able to prove the case and the learned trial Court, has therefore, wrongly convicted the accused. It was further pointed out on behalf of the accused that the prosecution case is highly unbelievable as there was no intention on the part of the accused to kill his own wife and the prosecution has not been able to prove the "intention" as well as the "motive" behind the alleged offence. It was also urged on behalf of the accused that the accused and the deceased had 15 years of marriage life and the accused in fact had come to take the deceased and he has been falsely implicated in the present case. It was also submitted that the alleged incident occurred at 7-30 hrs. and the lights were off because there was no electricity, and therefore, it was not believable that the occurrence of the alleged incident was noticed by eye-witnesses, more particularly P.W. 3 and P.W. 4, and therefore, their oral testimonies are not believable. Learned Advocate Ms. Parikh, therefore, urged that the present appeal deserves to be allowed and the judgment of conviction and sentence, as pronounced by the trial Court, requires to be set aside.

10. As against this, learned A.P.P. Mr. K. L. Pandya, has opposed the present appeal and has supported the impugned judgment and order passed by learned trial Court and contended that the learned trial Court was perfectly justified in its

judgment of conviction and sentence looking to the evidence on record of the case. He further pointed out that the incident was taken place on 19-4-2002 at 7-30 p.m., and therefore, it was not dark but it was dusk, and therefore, P.W. 3 and P.W. 4, both the two eye-witnesses, could be able to see everything of the occurrence of the incident. Learned A.P.P. has also relied upon the depositions of P.W. 4, P.W. 5, P.W. 6 as well as P.W. 9 and has pointed out that the accused had come to the parental house of the deceased only with an intention to kill the deceased, and therefore, gave blow on the vital part of the body of the deceased in presence of P.W. 4 and P.W. 5. Learned A.P.P. also pointed out that there is adequate evidence to show that the relation between the accused and the deceased had worsen and the deceased had left the matrimonial home since one and half months and was staying at her parental house and there is also evidence to prove that the accused used to mentally and physically torture the deceased for getting the amount of Rs. 50,000/-, which was deposited by father of the accused in the name of the deceased.

10.1. Learned A.P.P. has also submitted that the injury caused to the body of the deceased whereof serious in nature and as per the medical evidence, which is supported by serological report of F.S.L., and therefore, urged that the learned trial Court has rightly convicted the accused and the appeal does not require interference.

11. We have examined the record and proceedings in context of the rival submissions made by both the sides.

12. At the outset, it is worthwhile to note that P.W. 2, who was the Medical Officer at Dhanera Civil Hospital, in his oral testimony, has clearly stated that on 19-4-2002 i.e. on the date of the offence, the deceased was brought to Dhanera Civil Hospital with a history that her husband had inflicted a knife blow. He has further stated that the deceased had received incised stab wound of three inches and deep into the stomach and was bleeding. It was also stated that the deceased was semi-conscious and her blood pressure was 60. He also opined that the injuries in question can be made by sharp cutting weapon. He has also deposed that he had examined the deceased and found a superficial abrasion just above the nipple on the left side chest of about 1 x 1.5 inches. The injuries, which were stated by P.W. 2, are proved by the prosecution by way of medical evidence Exhs, 16 and Exh. 17. Similarly, P.W. 1, Dr. Babulal Bechardas Sutaria, who performed autopsy of the deceased, has categorically stated that there were following external as well as internal injuries:

? An incised stab wound of 3.0 cm. x 1.5 cm., Eleptical in shape at epigastric region just right to mid line and 2 cm. below lower costal margin and 15 cm. above umbilicus, Dressed. With red blood clot, surrounding area is blood stained. Wound is pointed above downward and backward and tapping medially.

? Dressed V. S. wound with polythene tube in situ at right ankle joint.

? Anti-mortem.

? Pale, incised wound at partial peritoneum at epigastric region below injury No. 1.

? Cavity stomach 3 cm. x 1.5 cm. Massive haemoperitoneum with blood clots.

? Oesophagus pale.

? Stomach - Intestine - pale and empty, incised wound on superior surface of gastro-duodinal junction 1.5 cm. x 0.5 cm. and incised wound of 1.0 cm. x 0.5 cm. on inferior surface of gastro-duodinal junction, Liquid food material coming out from wounds. Small bowels are pale and contains liquid food, large bowels pale and contains semi-solid stool.

? Liver is pale and there is incised wound of 4 cm. x 2 cm. at lateral edge of left lobe with blood clot in it.

? Spleen pale.

? Kidney pale.

? Bladder pale and empty.

? Uterus is bulky and soft, on opening it contains male foetus of about four months of intrauterine growth. Uterine appendages are normal.

? Food might be taken 6 hrs. before death.

13. It may be noted that P.W. 1 has clearly opined that at the time of autopsy found that uterus of the deceased was bulky and soft and on opening it contained male foetus of about four months, which indicates that the deceased has four months pregnancy and P.W. 1 has clearly stated even in his deposition at Exh. 9 that the injuries mentioned in Column 17 can be caused by pointed weapon like "knife". He has further opined that as stated in post-mortem report the cause of death was haemorrhagic shock due to stab injury to vital organs.

14. We have also gone through the evidence of the eye-witnesses, P.W. 4 and P.W. 5, who happens to be aunt and brother of the deceased respectively, and we find no reason to disbelieve their oral testimonies, on the contrary we find ring of truth in the oral testimonies of P.W. 4 and P.W. 5. P.W. 4 in her cross-examination has categorically stated that even though the lights were off, it was possible to see everything and has rightly pointed out by learned A.P.P. that the date of incident is in the 3rd week of April i.e. 19-4-2002 and the time of incident being 7-30 p.m., it was time of dusk and not dark. Similarly, P.W. 5 in his deposition has also stated that the deceased had differences with the accused and was brought to the parental house before one and half months. Learned trial Court has rightly relied upon the oral testimonies of P.W. 4 and P.W. 5.

15. We have also examined the oral testimonies of P.W. 6, P.W. 7, and P.W. 9 and the prosecution has thus been able to prove the guilt against the accused on the basis of oral testimonies of these witnesses.

16. We have also gone through the medical evidence as well as serological report of F.S.L., which clearly indicates that soil, control sample soil collected from the scene of offence, knife, shirt and pant of the accused, clothes of the deceased bears human blood group "A" and the same matches with the human blood group of the deceased. We, therefore, have no hesitation to hold that the prosecution has been able to prove the guilt against the accused to its hilt. An attempt has been made on behalf of the accused that when the alleged incident occurred the lights were off and at that time there was no electricity. However, learned trial Court has rightly recorded the finding that the incident had occurred on 19-4-2002 at 7-30 p.m. in the evening and the time is not challenged by the accused and it was not dark but it was time of dusk. It may also be noted that the accused has not explained the injuries which were found upon his person. Thus, the learned trial Court has rightly held that the guilt is proved against the accused.

17. The injuries indicated above, the weapon of offence, the part of body chosen to inflict such injuries and the nature and gravity thereof, coupled with the circumstances in which they were caused, clearly establish with the requisite ingredients of clause "Thirdly" of Section 300 of I.P.C. and the act of the accused was nothing short of a murder. It also clearly transpires from the evidence on record that the bodily injuries of the deceased were sufficient in the ordinary course of nature to cause death. It is also evident from the evidence on record that there was an intention to inflict those particular bodily injuries with a deadly weapon with a knowledge that the same would result into death. Hence, the act of the accused would squarely fall within the purview of Section 300 "thirdly" punishable u/s 302 of I.P.C. The prosecution has thus, been able to prove the guilt of the accused and the trial Court has rightly held that the guilt is proved against the accused.

18. For the foregoing reasons, we dismiss the appeal.