

(2017) 01 GUJ CK 0172
In the Gujarat High Court
Case No : 596 of 2003

VANKAR MULJIBHAI KHEMABHAI & ANR

APPELLANT

Vs

STATE OF GUJARAT

RESPONDENT

Date of Decision : 16-01-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 313, Section 374 - Power to examine the accused - Appeals from convictions
Indian Penal Code, 1860, Section 114, Section 302, Section 304, Section 300, Section 325, Section 504, Section 232 - Abettor present when offence is committed - Punishment for murder - Punishment for culpable homicide not amounting to murder - Murder - Punishment for voluntarily causing grievous hurt - Intentional insult with intent to provoke breach of the peace - Counterfeiting Indian coin

Citation : (2017) 01 GUJ CK 0172

Hon'ble Judges : Z K Saiyed

Bench : Single Bench

Advocate : Harish K Barot, N J Shah

Final Decision : Dismissed

Judgement

1. The present conviction Appeal has been filed by the appellants-original accused under Section 374 of the Cr. P.C., against the Judgment and order dated 03.02.2003 rendered by the learned Additional Sessions Judge, (Second Fast Track Court), Mehsana in Sessions Case No.56 of 1999, whereby the appellant No.1-accused was convicted for the offence punishable under Section 304(2) of the Indian Penal Code and sentenced to undergo seven years rigorous imprisonment with fine of Rs.5000/-, in default of payment of fine, further rigorous imprisonment of two years and appellate No.2 was convicted for the offence punishable under Section 325 of the Indian Penal Code and sentenced to undergo three years rigorous imprisonment with fine of Rs.5000/-, in default of

payment of fine, further rigorous imprisonment of one year.

2. It is the case of the prosecution that on 26.11.1998 at 2:00 p.m., both the accused came to the complainant's house and abused him with filthy words. Thereafter, all of a sudden accused Vijaybhai caught hold the father of the complainant and accused Muljibhai gave kick on the stomach of the father of the complainant with his head. Thereafter, the complainant intervened and Vijaybhai picked up a brick and gave a blow on the left cheek of the father of the complainant. At that time, Muljibhai picked up a brick and gave blow on the right shoulder of the father of the complainant. Thereafter, Muljibhai also gave a blow with brick on the chest of the father of the complainant. At that time, the father of the complainant fallen down. On the shouts raised by the complainant, uncles of the complainant, Samabhai Vankar and Shankarbhai Vankar and Kishorbhai Vankar altogether reached the scene of offence. On seeing them, both accused ran away from the scene of offence. Thereafter, complainant admitted his father at Civil Hospital, Visnagar by hiring a auto-rickshaw. The doctor of Civil Hospital, Visnagar declared the father of the complainant, Hargovindbhai as dead.

3. The complaint was given by the complainant before the Visnagar Police Station being C.R.No.501 of 1998 for the offence punishable under Sections 302, 325, 232, 504 and 114 of the IPC. The investigation was carried out and statements of witnesses and victim were recorded. Panchanama of scene of offence and inquest panchnam were drawn. Medical papers were tagged with the investigation papers. Thereafter, accused were arrested and and panchnama of the physical condition of the appellants was drawn. After collecting sufficient evidence by the Investigating Agency, charge-sheet was filed before the learned Judicial Magistrate First Class, Visnagar, which was numbered as Criminal Case No.330 of 1999. As the said case was exclusively triable by the Court of Sessions, learned Chief Judicial Magistrate, Visnagar, committed the case to learned Additional Sessions Judge, Mehsana, which was thereafter, numbered as Sessions Case No.56 of 1999.

4. On the basis of above allegations, charge was framed against the appellants-accused and read-over and explained to the appellants-accused for the alleged offences and plea was recorded, wherein, appellants-accused pleaded not guilty to the charge and claimed to be tried.

5. In order to bring home the charges against the accused person, prosecution has examined several witnesses and also produced documentary evidences.

6. After examining the witnesses, further statement of the appellants-accused under Sec. 313 of Cr PC was recorded, wherein the appellants-accused have denied the case of the prosecution and submitted that they are totally innocent and they are charge-sheeted because of animosity took place during the election of Sarpanch.

7. After considering the oral as well as documentary evidence and after hearing the parties, learned Additional Sessions Judge, Mehsana vide impugned

judgment and order held the appellants-accused guilty to the charges levelled against them, and convicted and sentenced the appellantaccused, as stated above.

8. Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Vyara, the present appellants-accused has preferred this appeal.

9. Heard Mr.Harish Barot, learned advocate for the appellants-accused, and Mr. N.J.Shah, learned Additional Public Prosecutor for the respondent-State.

10. Mr. Harish Barot, learned advocate contended that the judgment and order passed by the learned Sessions Judge is illegal, invalid and improper. He has also contended that the learned Sessions Judge has not considered the case of the defence and material evidence produced on record and has passed absolutely wrong order. He has contended that the prosecution has miserably failed to prove its case beyond reasonable doubt, yet the learned Sessions Judge has not considered the probable defence of the appellants and has wrongly convicted the appellants. Learned advocate for the appellant-appellant argued at length and contended that the judgment and order of the learned trial Judge is against the provisions of law and learned trial Judge has wrongly considered the evidence of the prosecution and wrongly convicted them for the alleged offences. He read the charge and vehemently argued that in present case, prosecution could not prove its case beyond reasonable doubt. He further argued that probable defence made by the appellants-accused before the learned trial Judge is that injuries caused to the deceased as well as injured person can be possible due to falling down on the earth. Eye-witness-Shamalbhai Parshottambhai Vankar, who stated in his deposition that the dispute took place between him and accused in respect of cattle and for the said dispute, case is also pending in Visnagar Court. It is further argued by Mr. Barot that as per the case of the prosecution, the accused started abusing Shamalbhai and so-called incident took place. He read the injuries from the postmortem note and argued that there is no possibility of brain hemorrhage, if a kick by head is given on the stomach by a person. The brain hemorrhage can be possible due to falling down on the earth. He read the evidence of the witnesses and argued that role of the appellants-accused is not disclosed. He then argued that because of animosity between the deceased and uncle, present appellants are booked by the complainant. Mr. Barot read the provisions of Sections 300 and 325 of the IPC and argued that as per the provisions of law, it is the duty of the prosecution to prove its case through oral and documentary versions. In present case, allegations made against the present appellants-accused are not proved through oral and documentary evidence of the prosecution. He further submitted that the learned trial Judge has committed grave error in convicting the appellants-accused. He lastly prayed before the Court to bestow some mercy upon appellantsPage accused by reducing the sentence to some extent as the offence in question took place in the year 1998.

11. As against this, Mr.N.J.Shah, learned Additional Public Prosecutor, has

contended that the judgment and order passed by the learned Sessions Judge is absolutely just and proper. He has contended that the prosecution has proved its case beyond reasonable doubt. He has contended that looking to the overall facts and circumstances of the case and evidence produced on record, order passed by the learned Sessions Judge is absolutely just and legal and is not required to be interfered with. Mr. Shah has read the charge and evidence of the prosecution witnesses and contended that in present case, initially charge under Section 302 of the IPC was framed against the appellants-accused, however, considering the role of the appellants-accused, the said charge of murder was removed. Further, appellant No.1- accused was convicted for the offence punishable under Section 304 Part-II of the IPC, whereas appellant-accused was convicted for the offence punishable under Section 325 of the IPC. He then argued that cause of death is due to brain hemorrhage as one head kick was given to the deceased on the chest by the respondents-accused. No doubt, learned trial Court did not consider that there was an intention of the appellants-accused to kill the deceased, but deceased succumbed to the injury due to force used by the appellant No.1-accused by way of head kick on the chest. Further, on perusal of the panchnama of place of offence, it cannot be said that injury caused to the injured and deceased was due to falling down on the earth. Lastly, he contended that considering the serious offence in nature, learned trial Judge has not considered the probable defence raised by the appellants-accused and has rightly convicted the present appellants-accused and therefore, she prayed to dismiss this appeal.

12. I have gone through the impugned judgment and order passed by the learned Sessions Judge and oral as well as documentary evidence produced on record of the case. I have read the oral evidence of prosecution witness and also perused the charge framed against the appellants.

13. First of all, originally, charge under Sections 302 read with Section 114 and 325 of the IPC are framed against the appellants-accused, the learned trial Judge did not consider the case of the prosecution for the offence punishable under Section 302 of the IPC. I have minutely perused the evidences of both the doctors as well as Postmortem note. There was no intention of the appellants-accused to kill the deceased by way of giving kick blow on the chest and therefore, the learned trial Court has rightly considered that the prosecution could not prove charge of murder. It is true that prosecution could not prove its case for the offence punishable under Section 302 of IPC, but looking to the injuries found from the body of the deceased as well as injured person, it is crystal clear that deceased was beaten by appellants-accused. Moreover, as per the provisions of law, the sentence awarded by the learned trial Court to the appellants-accused was lesser than what was provided in provisions of law. Even, State has not filed any application for enhancement of sentence against the judgment and order of conviction. Even in statement recorded under the provisions of Section 313 of the Code of Criminal Procedure, the appellants-accused failed to give probable defence, but raised contention that they are charge-sheeted in the charge-sheet by the police for such serious offence. The

probable defence raised by the appellants-accused before the learned trial Judge that wrong case filed against them by keeping hostility of election of Sarpanch, which is clearly an afterthought. From the overall discussion, I am of the opinion that no prima-facie case is found against the appellantsaccused and learned trial Judge has rightly convicted the appellants-accused.

14. Mr. Barot, learned advocate has prayed to reduce the sentence to some extent considering the old age of appellant No.1-accused, but looking to the nature of injuries caused to the deceased as well as injured person, the said request cannot be acceded to.

15. I am, therefore of the opinion that the learned trial Judge has not committed any error in holding the appellants-accused guilty for the charges levelled against them and sentence awarded to them. Therefore, no interference is required. The judgment and order of conviction and sentence dated 03.02.2003 rendered by the learned Additional Sessions Judge, (Second Fast Track Court). Mehsana in Sessions Case No.56 of 1999, is hereby confirmed. The present Criminal Appeal deserves to be dismissed and is hereby dismissed. Appellants-accused are directed to surrender before the jail authority within a period of four weeks. Record and Proceedings, if any, be sent back to the trial Court concerned, forthwith.