
(2013) 12 GUJ CK 0040
In the Gujarat High Court
Case No : Criminal Appeal No. 605 of 2011

Vinodbhai Popatbhai Sataliya

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 27-12-2013

Acts Referred:

Citation : (2013) 12 GUJ CK 0040

Hon'ble Judges : K.S. Jhaveri, J;K.J. Thaker, J

Bench : Division Bench

Advocate : Pratik B. Barot, for the Appellant; H.S. Soni, Learned APP, for the Respondent

Final Decision : Partly Allowed

Judgement

K.J. Thaker, J.—By way of this appeal, the appellant, original accused, has challenged the judgment and order passed by the learned Additional Sessions Judge and Presiding Officer, Fast Track Court, Amreli camp at Rajula, in Sessions Case No. 01 of 2009 dated 05.10.2010, whereby, the appellant herein, original accused, has been convicted for the offence punishable u/s 302 and 324 of the Indian Penal Code (for short, "the IPC") and u/s 135 of the Bombay Police Act.

For conviction u/s 302 IPC, the appellant has been sentenced to undergo imprisonment for life and fine of Rs. 5,000/-, in default of payment of fine, the appellant shall undergo further simple imprisonment for two months.

For conviction u/s 324 IPC, the appellant has been sentenced to undergo rigorous imprisonment for six months and fine of Rs. 1,000/-, in default of payment of fine, the appellant shall undergo further simple imprisonment for one month.

For conviction u/s 135 of the Bombay Police Act, the appellant has been sentenced to undergo rigorous imprisonment for six months and fine of Rs. 500/-, in default of payment of fine, the appellant shall undergo further simple imprisonment for fifteen days. All the sentences were ordered to run concurrently

and the appellant has been given the benefit of set off. A complaint was filed by the complainant- Champaben Labhubhai Haribhai Satliya- mother of the deceased, inter alia alleging that on 7.10.2008 at night her son-deceased was playing Garba and her husband was also present there. It is the say of the complainant that when her son was playing DVD player, the appellant was staring him fiercely. Therefore, her son told the said fact to the complainant and suddenly the accused caught hold her son and inflicted a knife blow on his chest and fled away from there. As a result of which, her son sustained grievous injury and was taken to the hospital, where he was declared dead.

1.1. After necessary investigation was carried out, the appellant came to be arrested. On completion of investigation, charge-sheet was filed before the appropriate Magisterial Court. Since the case was Sessions triable, it was committed to Sessions Court, Amreli. The appellant herein pleaded not guilty and therefore, charge was framed and trial was initiated.

1.2. To prove the case against the present appellants, the prosecution had examined following witnesses:--

1.3. The prosecution had also relied upon the following documentary evidences so as to bring home the charges against the appellant-accused.

1.4. At the end of trial, the Court below recorded the further statement of the accused u/s. 313 of the Criminal Procedure Code and ultimately, passed the impugned judgment and order of conviction, which is under challenge in the present appeal.

2. Learned advocate for the appellant has fairly submitted that he is not disputing the presence of the appellant at the scene of offence. He is also not disputing the fact that the death of the deceased was a homicidal death, but relied on the postmortem note and contended that the accused had inflicted only one blow on the chest of the deceased, therefore, this Court may consider the case of the present appellant u/s 304 (Part I) or (part-II) of the IPC.

3. Learned APP appearing for the respondent-State has submitted that the trial Court after appreciating the evidence on record has passed the impugned judgment order. He further submitted that the trial Court has rightly passed the impugned order since there were ample direct and indirect evidences on record to connect the appellants with the crime.

4. Heard learned counsel for the respective parties and considered the documents forming part of the appeal as well as original record summoned from the trial Court. In this case, the prosecution has examined PW-2-Dr. Rashmikanth Mansukhlal Joshi at Exhibit-14, who has conducted the postmortem of the dead body of the deceased. He has categorically stated that death was caused due to cardio respiratory arrest on account of shock and stab wound. In column No. 17 of the postmortem note, the injuries described as under:--

17. 1. Stab wound elliptical in shape 4 cm. x 2 cm. x 7-8 cm. in depth near axilla

(left) below and medial to distal (about 10 cm. - 4 cm.) end of device muscles are seen wound is directed down, medially and posteriorly. Skin-subcutaneous muscles wound is there in heart upper portion as posterior wall of heart- medially.

A deep wound- Stab wound penetrating heart.

5. Thus, from the testimony of the above witness, we are of the view that the death of the deceased was a homicidal death.

6. In this case, the prosecution has examined P.W. 3-Champaben Labhubhai Parmar, who is the complainant and the mother of the deceased vide Exhibit-20. In her evidence, she stated that on 07.10.2008 at night her son was playing Garba and when her son was playing DVD player, the appellant was staring him fiercely. Therefore, her son informed the said fact to her, suddenly the accused got up and caught hold of her son and inflicted a knife blow on his chest. Thereafter, her son was taken to the hospital, where he was declared dead. Nothing incriminating has come out in the cross-examination of this witness to disbelieve her evidence.

7. P.W-4-Kishorbhai Labhubhai Satliya Parmar, who is the brother of the deceased, has been examined vide Exhibit-23. In his evidence, he stated that on the date of incident, when his brother was playing DVD player, the appellant was staring him fiercely. Therefore, his brother told the said fact to his mother, thereafter the accused caught hold of his brother and inflicted a knife blow on his chest and fled away from there. This witness was extensively cross-examined by the learned advocate for the defence, but nothing incriminating has come out in the cross-examination of this witness to disbelieve his evidence.

8. P.W. 5-Labhubhai Haribhai Satliya, has been examined vide Exhibit-27. In his evidence, he narrated the same and similar facts as stated by P.W. 3 and P.W. 4. The other prosecution witnesses have also supported the prosecution case, their evidence are perused by us but not reproduced. Apart from that, the FSL report also supports the prosecution case.

9. Considering the evidence of the witnesses, there is no doubt in our mind about the guilt of the accused. The accused and accused alone was the one who had committed the offence in question. However, the short question which falls for our consideration is whether, on reappraisal of the peculiar facts and circumstances of the case, the conviction of the appellant u/s 302 of the Indian Penal Code should be upheld or the conviction deserves to be converted u/s 304 Part-I or Part-II of the Indian Penal Code. It would be relevant to refer section 299 and Section 300 of the Indian Penal Code, which read as under:--

299. Culpable homicide:--Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

300. Murder.--Except in the cases hereinafter expected, culpable homicide is

murder, if the act by which the death is caused is done with the intention of causing death, or

2ndly.--If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

3rdly.--If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

4thly.--If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

xxx xxx xxx xxx

304. Punishment for culpable homicide not amounting to murder:--Whoever commits culpable homicide not amounting to murder shall be punished with [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death,

Or

With imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

10. The Apex Court in its recent decision in the case Chenda @ Chanda Ram Vs. State of Chhatisgarh, the Apex Court made the following observations:--

15. In Gurmukh Singh Vs. State of Haryana, after scanning all the previous decisions where the death was caused by a single blow, this Court indicated though not exhaustively, a few factors to be taken into consideration while awarding the sentence. To quote:

23. these are some factors which are required to be taken into consideration before awarding sentence to the accused. These factors are only illustrative in character and not exhaustive. Each case has to be seen from its special perspective. The relevant factors are as under:--

[a] Motive or previous enmity;

[b] Whether the incident had taken place on the spur of the moment;

[c] The intention/knowledge of the accuse while inflicted the blows or injury;

[d] Whether the death ensue instantaneously or the victim died after several days;

[e] The gravity, dimension and nature of injury;

[f] The age and general health condition of the accused;

[g] Whether the injury was caused without premeditation in a sudden fight;

[h] The nature and size of weapon used for inflicting the injury and the force with which the blow was inflicted;

[I] The criminal background and adverse history of the accused;

[j] Whether the injury inflicted was not sufficient in the ordinary course of nature to cause death but the death was because of shock;

[k] Number of other criminal case pending against the accused;

[l] Incident occurred with the family members or close relations;

[m] The conduct and behaviour of the accused after the incident. Whether the accused had taken the injured/the deceased to the hospital immediately to ensure that he/she gets proper medical treatment?

These are some of the factors which can be taken into consideration while granting an appropriate sentence to the accused.

11. On consideration of the entire evidence, including medical evidence, as also the manner of assault, we are of the opinion that the appellant had no grudge towards the deceased and the incident in question had happened in the heat of passion. The appellant could not be said to have taken any undue advantage or acted in a cruel manner. It has come on record that the appellant had inflicted only a single blow with knife on the chest of the deceased. It has also come on record that no criminal case except the present one is pending against the appellant.

12. The Supreme Court had an occasion to deal with cases of similar nature. In *Jagrup Singh Vs. State of Haryana*, the accused had inflicted a single blow in the heat of moment in a sudden fight with blunt side of Gandhala on the head of the deceased causing his death. According to the opinion of the doctor this particular injury was sufficient in the ordinary course of nature to cause death. But, according to the Supreme Court, the intention to cause such an injury which was likely to cause death had not been made out. The Supreme Court altered the conviction of the accused from Section 302 IPC to Section 304 Part II IPC and the accused was directed to suffer rigorous imprisonment for a period of seven years.

13. In another case *Pappu Vs. State of Madhya Pradesh*, the Supreme Court observed as under:

..... The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300 IPC is not defined in the IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage".

14. Considering the facts and circumstances of the case and also considering the above principles laid down by the Apex Court, we are clearly of the view that the conviction of the present appellant cannot be sustained u/s 302 of the Indian Penal Code, but the appropriate Section under which the appellant ought to be convicted is Section 304 Part-I of the Indian Penal Code. For the foregoing reasons, the present appeal is partly allowed. The judgment and order under challenge is modified and altered from Section 302 of the Indian Penal Code to one u/s 304 Part-I of the Indian Penal Code and the appellant is sentenced to undergo rigorous imprisonment for a period of 10 (ten) years instead of life imprisonment. The rest of the part of the judgment and order remains unaltered. The appellant herein be granted the benefit of set off and remission as admissible under the law. R & P, be sent back to the concerned Trial Court forthwith.