

2009 (21) GHJ 376

GUJARAT HIGH COURT

Hon'ble Judges:D.H.Waghela and Anant S.Dave JJ.

Rajeshkumar @ Raju Lakhubhai Patel Versus State Of Gujarat

CRIMINAL APPEAL No. 2014 of 2006 ; 2303 of 2006 ; *J.Date :- MAY 13, 2009

- [INDIAN PENAL CODE, 1860](#) Section - [302](#), [304](#), [323](#)

Indian Penal Code, 1860 - S. 302, 304, 323 - murder - accused challenged his conviction for offence punishable u/s. 302 and sentence of life imprisonment with fine of Rs. 75000 - death of deceased by single fatal blow with an axe on head - accused offered Rs. 3 lacs as fine - victim and his family were highhanded and headstrong persons, who blocked public street at the time of and after incident and widow of victim had record of prohibition cases - held, in facts of case appellants are acquitted of charge of offence u/s. 323 and impugned judgment set aside to that extent - conviction of appellant converted from offence punishable u/s. 302 to conviction u/s. 304 - sentence of imprisonment for life is reduced to RI for five years with fine of Rs. 3 lacs - appeals disposed of accordingly.

Imp.Para: [[10](#)] [[11](#)] [[12](#)]

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JUDGMENT :-

D.H.WAGHELA, J.

1 Criminal Appeal No.2014/06 is preferred by the appellants upon being convicted for the offence punishable under Section 323 and sentenced to RI for 3 months and fine, whereas, Criminal Appeal No.2303/06 is preferred from the same judgment upon the appellant being convicted for the offence punishable under Section 302 of IPC and being sentenced to life imprisonment with fine of Rs.75,000/-. All the appellants are real brothers and the victims of the offence are neighbours.

2 According to the prosecution case, the main accused dealt a single blow of axe on the head of the victim on 28.10.1992 at around 5.00 p.m. after sudden quarrel due to brother of the deceased not removing his moped from public

street and the way of brother of the main accused being partly blocked while he was trying to pass on his scooter. The appeal of the main accused was restricted to urging reduction of sentence on the basis that he could not have been convicted for the offence punishable under Section 302 of IPC but ought to have been, at the most, be punished under Section 304 of IPC with leniency, in the peculiar facts of the case. The other two appellants sought acquittal on the basis that the injuries alleged to have been inflicted by them were not proved and assault by them on the women folk among the victims was utterly improbable.

3 Perusing the impugned elaborate judgment, it was clear that the trial was conducted after 13 years of the offence and main three eye witnesses were close relatives of the victims as also neighbours of the appellants. Initially, the appellants were charged with the offence punishable under Sections 302 and 323 read with Section 34 of IPC and Section 135 of the Bombay Police Act. However, at the end of the trial, after appreciation of entire evidence on record, the trial court recorded findings of fact to the effect that motive or premeditation for committing the offence was not proved, that the eye witnesses were present at the time of offence, that the accused persons had come to the scene of the offence one after the other, that there were number of minor discrepancies and major contradictions which were negligible or apparently caused due to long lapse of time between the offence and recording of evidence. The injury on the deceased was inflicted on vital part of his body and a single blow of the axe was forceful enough to cause death while the other victims had also received minor injuries. Section 34 of IPC could not be applied in the facts of the case and there was no evidence of any notification for the violation of which offence under Section 135 of the Bombay Police Act could be held to have been proved.

4 It was argued before the trial court and reiterated before this court that in fact one of the appellants had lodged a complaint on the next day for the injuries suffered by him on his back by three blows of spade dealt by the deceased-victim. That complaint was exhibited in evidence as Exh.65 (Exh.58) in deposition of the Investigating Officer Mansurbhai who was examined as PW 12 at Exh.54. Even independent of the contents of the complaint, it had come in the deposition of Investigating Officer Mansurbhai that complainant Rajesh had injuries on his body, that he was sent to hospital and was examined by Dr.Mahayaveshi. It also came on record by panchnama Exh.21, and supported by the Investigating Officer, that the main accused person had suffered from previous injury on his leg and was limping whereas complainant of the counter complainant, namely Rajesh had minor injuries on his back.

5 Thus, it could not be gainsaid that there was a quarrel and scuffle among the family members of the victims and the assailants at the time of the incident in question which happened at around 5.00 p.m. on 28.10.1992. There is also no dispute about the fact that the incident had happened on a busy street and

there were number of other unconnected people, none of whom was examined as eye witness. There is also no dispute about the death of the victim having been caused by the single fatal blow in the form of bone deep chop wound of the dimension of 10.5 cm x 2 cm in the occipital and parietal region causing fracture and instant death. It was the case of the prosecution that the wife of the deceased had rushed to the spot and while she was holding the body of the deceased, other injuries were inflicted by the other accused with stick.

6 Perusing the important and relevant part of the depositions of the eye witnesses, it was seen that the wife of the deceased (Exh.25 PW 5) clearly deposed that the quarrel started when the brother of the deceased pulled out his Luna on the street and Rajesh, one of the accused, asked him to remove it. According to her, the main accused Navnit came running and limping with a bandage on his leg and dealt a blow of axe on the head of her deceased husband. She immediately sat down holding her husband on the ground when another accused Praful came there and dealt two blows of stick on her husband, before running away. At that time, another eye witness, Sumanben, was coming to help and she was also dealt a blow of stick by Praful. Rajesh, who had come on scooter, was stated to have dealt fist blows and kicks on the deceased. In her cross-examination, she admitted that people were coming and going on the street and when Rajesh had come on scooter, she was inside her house. She stated that her brother-in-law, Mukesh, never alighted from his moped and Praful had come after two minutes of the arrival of main accused Navnit. Then she turned around and deposed that when the altercation was going on, Navnit was in his house and after her husband fell down, all her family members sat and made a crowd around him. She further deposed that her husband was shifted to the Civil Hospital within two minutes of the injury. She also admitted that when she came out of her house, Rajesh and Mukesh were already engaged in physical altercation. She also admitted that there was a heap of gravel near her house as some civil work for construction of steps in the neighbouring house was going on. She clearly admitted that cases under the Prohibition Act were registered against her in Umra Police Station, and the street is closed after the incident for general public.

7 Another eye witness and injured victim, namely Sumanben, was examined at Exh.39 and told a different and inconsistent story in her cross-examination. She deposed that she was cooking inside her house at the time of incident and by the time she came on the spot, many other people from neighbourhood had already gathered at the scene. It was indirectly admitted that the moped parked by Mukeshbhai was really blocking the street, which was very narrow at the spot, and the verbal quarrel had continued for several minutes before the physical altercation started. She clearly stated that during the whole of the incident, Rajesh had never got down from his scooter and never moved. It was indirectly admitted by her that Rajesh was encircled by the family members of the deceased and she admitted that Rajesh had lodged complaint against herself.

8 The third eye witness, viz. Mukesh (Exh.42 PW 8), after reiterating broadly the version of the prosecution, admitted in his cross-examination that the house of the main accused, i.e. Navnit, was more than 100 feet away from his house and any verbal altercation or even shouting could not have been heard even outside the house of Navnit. He stated that after 5 to 10 minutes of falling of the victim on the ground, Praful had come and dealt blows of stick and kicks on the deceased.

9 Reading the depositions as a whole of all the three eye witnesses, it clearly transpires that the witnesses have tried to stick to a consistent version but failed to be consistent in the details when they were cross-examined. In absence of any strong motive or even an allegation of premeditation, it was clear that the incident was occasioned by blocking of the street by brother of the deceased and Rejesh was first engaged in the quarrel instead of the street being cleared for passage of his scooter. The quarrel appears to have heated up into a scuffle when the main accused Navnit rushed from his house in spite of recent serious injury in his leg and dealt a blow of an axe without even caring to see the face of the victim. That indicated gravity of the situation or imminent danger to the person of his brother, who was admittedly surrounded by members of the victim's family, who were otherwise also hostile. Thus, in short, even as the injury caused by the main accused was such as was likely to cause death it could not have been his intention to cause death since the situation had arisen without premeditation in a sudden fight and he appeared to have dealt the blow in the heat of passion upon a sudden quarrel. While it has clearly come in evidence of the prosecution that the accused had immediately fled from the spot, it was highly improbable that they would have overstayed to deal kick or stick blows on the victim, who had already fallen or that they would have returned to cause injuries to the other female members. In any case, injuries on the other victims are not proved and no other injuries except the fatal blow on back of the head of the victim, are recorded in the postmortem report. Therefore, none of the accused persons appeared to have acted in concert or in an extraordinarily cruel manner so as to take undue advantage of the situation. Under such circumstances, the culpable homicide does not fall in the parameters of clause (3) of Section 300 of IPC and it satisfied the conditions contained in exception (4) of Section 300 of IPC. Since the intention of the main accused person was not clearly established to be that of causing death or such bodily injury as was likely to cause death, the homicide could be said to have been at least with the knowledge that injury on the head with an axe was likely to cause death. Therefore, it is found and held that the prosecution had succeeded to the extent of proving beyond reasonable doubt the case of culpable homicide not amounting to murder, which would fall in Second Part of Section 304 of IPC. The other offences against the other accused persons were not proved beyond reasonable doubt insofar as, not only that the injuries were not proved but some injuries appeared to have been caused to one of the accused as well, indicating serious physical altercation wherein all the parties were entitled to exercise their right of private defence

and it could not be ascertained as to how and by whom, injuries were caused to the accused or the assailants.

10 It was, in the above context, submitted on behalf of the appellants by learned counsel Mr. Qureshi and Mr. Buch that the appellants are workers in the lower middle class without any record of any other offence, whereas, the victim and his family were very highhanded and headstrong persons, who blocked public street at the time of and after the incident and the widow of the deceased had a record of Prohibition cases registered against her. Even then, the appellants proposed to offer higher amount of fine to be paid by way of compensation to heirs of the deceased victim so as to take care of his orphaned children. It was submitted that the appellant Navnit voluntarily offered the sum of Rs.3,00,000/- by way of compensation which the court may order as payment to be made to the heirs of the victim under Section 357 of the Code of Criminal Procedure, 1973.

11 Learned APP vehemently argued and supported the impugned judgment by submitting that a single forceful blow with a deadly weapon like an axe could be presumed to have been dealt only with the intention of killing a person and the injuries alleged to have been suffered by one of the appellants could not be taken to have been proved. He, on that basis, submitted that the appellants were not entitled to any benefit of doubt as the prosecution had succeeded in bringing home the charge and the trial court was fully justified in convicting the appellants for the offences as held to have been proved.

12 In the facts and for the reasons discussed hereinabove, Criminal Appeal No.2014 of 2006 is allowed and the appellants are acquitted of the charge of offence under Section 323 of IPC, and the impugned judgment is set aside to that extent. Criminal Appeal No.2303 of 2006 is partly allowed so as to convert conviction of the appellant from the offence punishable under Section 302 to conviction under Section 304 of IPC, with the result that the sentence of imprisonment for life is reduced to R.I. for 5 years with fine of Rs.3,00,000/- (Rupees Three lacs only), whole of which shall be deposited with the Sessions Court at Surat and distributed equally among all the children and widow of the deceased-Dhirubhai Dahyabhai Patel, after due verification. The impugned judgment stands modified and the order of sentence stands substituted to the aforesaid extent. It is made clear that if the appellant fails to deposit Rs.3,00,000/- within three months from the date of the judgment, the appellant shall have to undergo R.I. for one year in addition to what is ordered hereinabove. The appeals are disposed accordingly.

