

Gujarat High Court

Vinubhai vs Unknown on 2 March, 2010

Author: A.L.Dave,&NbspHonourable Mr.Justice Bankim.N.Mehta,&Nbsp
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CR.A/540/2004 6/ 8 JUDGMENT

IN
THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL
APPEAL No. 540 of 2004

For
Approval and Signature:

HONOURABLE
MR.JUSTICE A.L.DAVE

and

HONOURABLE
MR.JUSTICE BANKIM.N.MEHTA

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1

Whether

Reporters of Local Papers may be allowed to see the judgment ?

2

To be

referred to the Reporter or not ?

3

Whether

their Lordships wish to see the fair copy of the judgment ?

4

Whether

this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5

Whether

it is to be circulated to the civil judge ?

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VINUBHAI
RADIYA @ RAVJIBHAI - Appellant(s)

Versus

STATE
OF GUJARAT - Opponent(s)

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Appearance
:
THROUGH
JAIL for
Appellant(s) : 1,MS NITA C BANKER for Appellant(s) : 1,
MR MR
MENGDEY APP for Opponent(s) :
1,
=====

CORAM

:

HONOURABLE

MR.JUSTICE A.L.DAVE

and

HONOURABLE

MR.JUSTICE BANKIM.N.MEHTA

Date

: 02/03/2010

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.L.DAVE) The appellant came to be tried and convicted by Sessions Court at Chhota Udepur in Sessions Case No.79 of 2002 for the offence of murder of his brother Chhaganbhai and causing hurt to one Jiniabhai. He was also tried for offence punishable under Section 135 of the Bombay Police Act. However, the trial Court found that the offences of murder and causing hurt punishable under Sections 302 and 323 of IPC were proved against him and the offence punishable under Section 135 of the Bombay Police Act was not proved by the prosecution. The trial Court, therefore, convicted the appellant of the offences punishable under Section 302 and 323 of IPC and sentenced him to undergo imprisonment for life with a fine of Rs.1,000/-, in default, RI for two months, and for the offence of causing hurt with RI for 6 months respectively. The trial Court acquitted the appellant for the offence punishable under Section 135 of the Bombay Police Act. Hence, this appeal.

2. As per the prosecution case, the incident occurred around 4-00 PM on 1.6.2002 in the osri of house of the victim Chhaganbhai located at village Guda Tal. Chhota Udepur. The appellant was allegedly quarrelling with his sister and at that time Jiniabhai as well as victim Chhaganbhai intervened and, therefore, the appellant assaulted them with wooden pestle. Jiniabhai suffered multiple injuries whereas Chhaganbhai was dealt with a blow on his head and another on his mandible. The head injury ultimately resulted into death of Chhaganbhai and, therefore, an FIR was lodged by PW-4 Chimanbhai. On the basis of that FIR the police investigated the case and filed

chargesheet in the Court of JMFC, Chhota Udepur, who in turn committed the case to the Court of Sessions and Sessions Case No.79 of 2002 came to be registered.

2.1 Charge was framed against the accused at Exh.6 for the offences punishable under Sections 302 and 326 of IPC and 135 of the Bombay Police Act to which the accused pleaded not guilty and came to be tried.

2.2. At the end of trial, the Sessions Court found that the charge punishable under Sections 302 of IPC and 323 of IPC were proved against the appellant and, therefore, recorded his conviction for the said offences and awarded sentences as stated in the earlier part of this judgment. The Sessions Court acquitted the appellant of charge of offence punishable under Section 135 of the Bombay Police Act. The sentences were ordered to run concurrently. The benefit of set off was also given to the appellant.

3. The appellant's prayer for suspension of sentence and grant of bail was rejected. The appellant absconded from 12.1.2008 till 8.10.2009 for a period of 636 days and at present he is in jail since 8.10.2009.

4. Learned advocate Ms Banker appearing for the appellant submitted that the incident was witnessed by PW 4, 5 and 6 namely Chimanbhai, Velkiben and Jiniabhai. They have deposed at Exhs. 22, 23 and 24 respectively and clearly implicated the appellant. She is, therefore, not in a position to assail the judgment so far as the involvement of the appellant is concerned.

4.1 Ms Banker submitted that the appellant would only challenge the conviction under Section 302 of IPC. Admittedly, the incident occurred all of a sudden, there was no premeditation alleged. The deceased intervened in a quarrel between the appellant and his sister and was dealt with a single blow on his head, which proved to be fatal. There could not have been any intention on the part of the appellant to cause death of the victim Chhaganbhai and, therefore, the trial Court erred in convicting the appellant for the offence of murder. Ms Banker, therefore, submitted that the conviction may be altered accordingly.

5. Learned APP Mr Mengdey has opposed the appeal. According to him, the intention may creep in any moment. It is the mental status and has to be inferred from the conduct of the accused. The accused has turned on the victim Chhaganbhai the moment Chhaganbhai intervened in the quarrel between the accused - appellant and his sister. It has come in evidence during cross-examination that Chhaganbhai did not offer any provocation to the appellant and, therefore, none of the exception to Section 300 would be attracted. The conviction is, therefore, rightly recorded and the appeal may be dismissed.

6. We have examined the record and proceedings in context of rival side submissions.

7. At the outset, we may record that after going through the evidence of first informant Chimanbhai PW -4, Velkiben PW-5 and Jiniabhai PW-6, who are all eye-witnesses to the incident, Ms Banker was justified in not pressing for a clean acquittal on the ground of non-involvement of the appellant.

These witnesses clearly indicated how the incident occurred and how the appellant reacted to intervention by Jiniabhai and Chhaganbhai.

8. The only question, therefore, that requires to be considered is whether the case would call for the punishment under Section 302 of IPC or 304 of IPC.

9. Upon reading the evidence of the eye-witnesses, it is clear that the appellant was quarrelling with his sister and when the deceased intervened, he inflicted blows with wooden pestle. One blow landed on the head whereas the other blow landed near the mandible on the neck of the deceased. This would show that he inflicted at least two blows on the vital part of the body. It is true that he could not have anticipated intervention by deceased Chhaganbhai, but when Chhaganbhai intervened he has given blow on head of Chhaganbhai with wooden pestle with force, which damaged the skull of Chhaganbhai so also the brain resulting into his death. The picture, therefore, that emerges is that when the incident started the appellant did not have any intention of causing death of Chhaganbhai, but when Chhaganbhai intervened the appellant inflicted two blows on vital part of the victim namely, head and mandible, which ultimately resulted into death of victim Chhaganbhai. The injuries were sufficient in the ordinary course of nature to cause death as testified by Dr. R.R. Upadhyay Exh.16. In our opinion, therefore, the case would attract the provisions contained in Section 304 Part-I and not 302 IPC. The trial Court was, therefore, in error in convicting the appellant for the offence of murder of Chhaganbhai. The appellant may not have intended to cause death of Chhaganbhai, but he certainly had intention of causing such bodily injury which was likely to cause his death and, therefore, the conviction of the appellant has to be altered from one punishable under Section 302 of IPC to 304 Part-I of IPC so far as the involvement of the appellant in the incident resulting into death of Chhaganbhai is concerned.

10. So far as conviction of the appellant under Section 323 of IPC is concerned, we find from the medical evidence of Dr Avniben Prathmesh Exh.12 and Dr. Pravinaben Pravinchandra Exh.20 that there were multiple injuries in the form of CLWs found on person of Jiniabhai. The injuries were simple in nature and the trial Court was, therefore, justified in convicting the appellant under Section 323 of IPC. No appeal against acquittal under Section 326 is preferred by the State and, therefore, no interference is called for in that part of the finding of the trial Court. Having found that the conviction of the appellant under Section 323 is well founded, we do not deem it proper to interfere with the quantum of sentence.

11. So far as the other offence is concerned, as discussed earlier, the conviction of the appellant under Section 302 of IPC would stand altered to conviction under Section 304 Part-I of IPC.

12. We have heard learned advocate Ms Banker on the question of quantum so also learned APP.

13. Ms Banker submitted that the appellant is a victim of circumstances where his act has resulted into death of his own brother. There were no disputes between the brothers earlier. The appellant hails from a less educated strata of Society, has three children to take care of and, therefore, minimum sentence may be awarded.

14. Mr Mengdey has submitted that the appellant absconded for 636 days and has actually undergone sentence of 5 years 10 months and 24 days. He may be appropriately punished.

15. Having regard to the circumstances of the case, we are of the view that the ends of justice would be met if the appellant is awarded RI for 8 (eight) years with no change in fine.

16. For the foregoing reasons, the appeal is partly allowed. The conviction of the appellant under Section 323 of IPC is confirmed. So far as the conviction of the appellant under Section 302 of IPC is concerned, the same is altered to conviction under Section 304 Part-I of IPC and therefore, the sentence awarded by the trial Court is altered and the appellant is awarded RI for 8 years with no change in fine. Both the sentences would run concurrently and the appellant would also be entitled for the benefit of set off.

(A.L.

DAVE, J.) (BANKIM N. MEHTA, J.) zgs/-

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